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21.1 General Discussion

The Project Prospectus is the description of the proposed improvement which serves as the support document for Federal Highway Administration (FHWA) authorization of federal funds. The project prospectus may serve as the design report for those projects that are categorically excluded. The prospectus also provides a schedule which tells state and FHWA programmers when the local agency anticipates obligating federal funds.

The Project Prospectus is one of the main items contained in the project application package discussed in this chapter. Other items in this package include the Local Agency Agreement (see Chapter 22) and the items of supporting data listed in the Project Application Checklist (Appendix 21.41).

21.2 Procedure for Submitting the Planning/TDM Application Package

Planning and transportation demand management (TDM) projects funded with STP and CM/AQ funds will be administered by Highways and Local Programs. These projects will require the Planning/TDM Prospectus.

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Regional Highways and Local Programs Engineer. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files.

Olympia Service Center Highways and Local Programs will request funding from FHWA/FTA. After FHWA/FTA authorizes and signs the PR1, Olympia Service Center Highways and Local Programs will set up the work order and notify the agency to proceed.

21.3 Procedure for Compiling the Project Application Package

Local agencies must submit the following to the Regional Highways and Local Programs Engineer:

- Prospectus Submittal Checklist.
- Original and one copy of the completed Project Prospectus.
- Original and one copy of the Local Agency Agreement signed by the approving authority (Chapter 22).
- Supporting data listed in the Project Application Checklist (Appendix 21.41).
- Original and one copy of the Environmental Classification Summary Form (Chapter 24).

A given project may not require all of the items in the checklist; however, the local agency must include all items that are relevant. Identify those items included with an "x" in the right column of the checklist. Many of the items listed in the checklist take place during the course of project development and are not complete at the time the prospectus is submitted. An agency may note such items on the checklist and submit them when they are completed. The latest point at which each item may be submitted is noted in Appendix 21.42 describing the item in detail.

Incomplete, incorrect, or missing items will delay project authorization.

The first item in the project application package is the checklist.

The next item is the three-page Federal Aid Project Prospectus itself, which must be filled out with the current project information. Page 1 of the Federal Aid Project Prospectus is used for the FHWA federal aid programming purposes. Pages 2 and 3 of the Federal Aid Project Prospectus give the state and FHWA additional information about the proposed project, such as design and accident data, and identify other government agencies that will be involved during project development. Appendix 21.43 contains instructions for completing the prospectus. Agency codes and numbers are provided in Appendixes 21.44 through 21.46.

21.4 Appendixes

- [21.41 Prospectus Submittal Checklist](#)
- [21.42 Instructions for Project Application Transmittal Items](#)
- [21.43 Instructions for Completing Project Prospectus](#)
- [21.44 List of County Code Numbers and WSDOT Region Numbers](#)
- [21.45 List of City Code Numbers](#)
- [21.46 List of Urban Area Numbers](#)
- [21.47 Local Agency Federal Aid Project Prospectus](#)

Forms

[Federal Aid Planning/TDM Project Prospectus](#)

Local Agency: _____ Project Identification: _____

Use this sheet as a cover sheet to the project prospectus package. Place an "X" in the right column to denote items included. If not applicable, state N/A. Include in the cover letter a comment explaining the action taken on each item as appropriate. Note later with an "L" if the information will be supplied at a future date.

Application:

- | | |
|---|-------|
| 1. Project Prospectus (Chapter 21.1) | _____ |
| 2. Vicinity Map | _____ |
| 3. Typical Roadway Section | _____ |
| 4. Typical Bridge Section | _____ |
| 5. Local Agency Agreement (Chapter 22) | _____ |
| 6. TIP/STIP Inclusion (MPO/County/Agency, selected/limited to \$) | _____ |

Supporting Data:

- | | |
|---|-------|
| 7. Safety Checklist — A Supplement to the Project Prospectus for 2-R and 3-R Projects (Appendix 41.71) | _____ |
| 8. Photos: (Railroad Crossing, ER event sites, as required) | _____ |
| 9. Deviation Request and Deviation Analysis Form to Justify Request (reference Appendix 41.72) | _____ |
| 10. Environmental Considerations (Chapter 24) | _____ |
| a. Class II Categorical Excluded (CE) — Environmental Classification Summary (ECS) | _____ |
| b. Class III Environmental Assessment (EA) | _____ |
| c. Class I Environmental Impact Statement (EIS) | _____ |
| d. SEPA Checklist | _____ |
| e. NEPA/SEPA/Section 404 Interagency Working Agreement | _____ |
| f. Evolutionarily Significant Unit (ESU) Determination of Effect Concurrence | _____ |
| 11. Hearing Notices (Chapter 43) | _____ |
| a. Transcript of Hearing | _____ |
| 12. Location and Design Approval (Chapter 43) | _____ |
| 13. Right-of-Way Requirements (Chapter 25) | _____ |
| a. Relocation Plan | _____ |
| b. Right-of-Way Plans | _____ |
| c. Right-of-Way Project Funding Estimate or True Cost Estimate | _____ |
| d. Request Right-of-Way Fund Authorization | _____ |
| 14. Right-of-Way Certification (Chapter 25) | _____ |
| 15. Agreements/Easements with Railroads, Utilities, and Other Agencies (Chapter 32) | _____ |
| 16. FAA Notification (FAA Form 7460-1) (Chapter 24) | _____ |
| 17. Tied Bids (Chapter 44) | _____ |

Remarks:

The application package shall include:

1. **Project Prospectus** (Attach completed prospectus submittal checklist)

To be included with original submittal and whenever there is a change in the scope of work or termini. For planning and TDM projects, use the Planning/TDM Prospectus.
2. **Vicinity Map**

A vicinity map of the project with the termini clearly marked must be submitted with the Project Prospectus. The map should be 212.5 mm (8.5 inches) by 275 mm (11 inches), and of a scale such that a reviewer can identify the project area in the field. Show the agency name, project title, project termini, north arrow, map scale, and nearest city or distance to the nearest city/town, or major road intersection.
3. **Typical Roadway Section**

Attach a sketch of the proposed roadway section showing all data pertaining to the section, including side slopes and limits of right-of-way. Also indicate stationing and note any variations of the section throughout the stationing. If the design does not conform to the design standards (see Section 41.6), a request for deviation from these standards with complete justification is required.
4. **Typical Bridge Section (If Necessary)**

Attach a sketch of the proposed bridge section showing all dimensions and type of construction and SWIBS #.

On bridge projects where approaches are to be included in the contract, include roadway section and length of the approaches. In cases where the structure consists of a main span and approach spans, the length of the approach spans should be indicated, if known.
5. **Local Agency Agreement**

This agreement is necessary on all projects involving federal funds and/or when state forces will be involved in the processing of projects. It must be submitted with the Project Prospectus. See Chapter 22 for instructions on completing the agreement.
6. **Deviation Request**

See Section 41.72.
7. **Hearing Notices**

Chapters 24 and 43 outlines procedures for public hearings.
8. **Location and Design Approval**

For most projects, the Project Prospectus along with the data satisfying items 1 to 14 of this transmittal pavement design criteria and geometric design will be considered sufficient for the location and design report. For complicated projects requiring a more detailed location and design report, refer to Chapter 43.
9. **Right-of-Way Requirements**
 - a. No right-of-way required. Mark appropriate box on prospectus. This serves as the agency's right-of-way certification. (This replaces the no right-of-way certification.)
 - b. Right-of-way required. Mark appropriate box on prospectus and refer to Chapter 25 for further instructions.
10. **Right-of-Way Certification**

Required on all projects where right-of-way was acquired. Refer to Chapter 25 for further explanation.
11. **Agreements/Easements With Railroads**

Refer to Chapter 32 for instructions.
12. **FAA Notification**

Check with the nearest FAA office if the project is within 3.2 km (2 miles) of an airport, if significant.

13. Tied Bids

If the project has tied bids (see Chapter 44), indicate the approval date. If the project is tied to another federally funded project, include the federal aid project number of the project, along with other information outlined in Section 44.

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Appendix 21.43

Instructions for Completing Project Prospectus

Ensure that reproductions are readable.

Federal Aid Project Number

Code the PREFIX and ROUTE number as outlined below:
(Do not fill in () to be used by WSDOT)

Prefix Code	Description
STPUL	STP Urban Funds, population greater than 200,000 (Seattle/Everett, Spokane, Clark County)
STPUS	STP Urban Funds, population 5,000 to 200,000
STPR	STP Rural Funds, population less than 5,000
STPE	Enhancement Program (Section 12.32C)
STPF	Flex Program
CM	Congestion Mitigation/Air Quality Program Nonattainment Areas, population greater than 200,000
STPX	Safety program, elimination of rail-highway hazards on federal aid system
STPXP	Safety program, installation of rail-highway protective devices
STPH	Safety program, hazard elimination program
BRS	Bridge replacement project on rural system, financed with Bridge Replacement Funds
BHS	Bridge rehabilitation project on rural system, financed with Bridge Replacement Funds
BRM	Bridge replacement project on urban system financed with Bridge Replacement Funds
BHM	Bridge rehabilitation project on urban system financed with Bridge Replacement Funds
BROS	Bridge replacement project not on the federal aid system but financed with Bridge Replacement Funds
BHOS	Bridge rehabilitation project not on the federal aid system but financed with Bridge Replacement Funds
ER	Project financed with Emergency Relief Funds

Route Code Federal Aid Project Route Number

Description	Single Route	Multiple Routes
Seattle, Everett Metropolitan Area	4-digit federal route number	Number is 9999
STPUS/STPUL	4-digit federal route number	Number is 99 followed by county number
STPR	4-digit federal route number	Number is Z9 followed by county number
STPH	4-digit federal route number	Number is 000S
STPE	If statewide selection: 1. For federally functionally classified work, 4-digit federal route number nearest or parallel to 2. Use off-system rules If not statewide selection: Number is EN followed by funding year (i.e., EN94)	Same as single routes Same as single routes
STPF	WSDOT to assign	WSDOT to assign
STPX/STPXP On-System Urban	4-digit federal route number	N/A
STPX/STPXP On-System Rural	4-digit federal route number	N/A
STPX/STPXP Off-System Urban	Number is city number	N/A
STPX/STPXP Off-System Rural	Number is 70 followed by county number	N/A
ER	Feds to assign	Feds to assign
BRS/BHS	4-digit federal route number	Number is Z9 followed by county number
BRM/BHM	4-digit federal route number	Number is 99 followed by county number
BROS/BHOS	Use off-system rules	Same as single routes
Off-System County	Number is 20 followed by county number	Same as single routes
Off-System City	Number is city number	Same as single routes

Date	Form is filled out.																		
Local Agency Project Number	Limited to eight (8) alpha/numeric characters that your agency identifies.																		
Federal Employer Tax ID Number	Required. Indicate the agency's tax identification number.																		
Agency	Required. This is your agency's name.																		
Federal Program Title	Enter the program number or title from the following list: 20.205 Highway Planning and Construction 20.209 Public Land Highways Most local agency projects are 20.205.																		
Project Title	Write the project's title, as shown in TIP/STIP.																		
Project Termini	Indicate the beginning and ending limits of the section to be improved. For railway/highway grade crossing projects, show the name of the railroad involved. For intersection projects write the name of the crossroad.																		
From: To:	Indicate MP to MP or KP to KP.																		
Length of Project	Project's length in miles or kilometers.																		
Award Type	Mark the appropriate type.																		
Federal Agency	Indicate where the federal funds are coming from FHWA, etc.																		
City Number	For a city project, write the city number from Appendix 21.45.																		
County Number	Write your county number from Appendix 21.44.																		
County Name	Write the county the project is in.																		
WSDOT Region	Locate your WSDOT region number from Appendix 21.44 or 21.45.																		
Congressional District	Indicate the number of the congressional district or districts in which this project is located.																		
Legislative District	Indicate legislative district(s).																		
Urban Area Number	For projects inside urban areas, locate the appropriate urban area number from Appendix 21.46.																		
TMA/MPO/RTPO	For projects inside urban areas (population greater than 50,000), give the code which represents the MPO for your area. <table> <tr> <td><u>Code</u></td><td><u>MPO</u></td></tr> <tr> <td>BFCG</td><td>Benton-Franklin Council of Governments</td></tr> <tr> <td>RTC</td><td>Regional Transportation Council</td></tr> <tr> <td>PSRC</td><td>Puget Sound Regional Council</td></tr> <tr> <td>SRTC</td><td>Spokane Regional Transportation Council</td></tr> <tr> <td>YVCOG</td><td>Yakima Valley Conference of Governments</td></tr> <tr> <td>TRPC</td><td>Thurston Regional Planning Council</td></tr> <tr> <td>WCCOG</td><td>Whatcom County Council of Governments</td></tr> <tr> <td>CWCOG</td><td>Cowlitz-Wahkiakum Council of Governments</td></tr> </table>	<u>Code</u>	<u>MPO</u>	BFCG	Benton-Franklin Council of Governments	RTC	Regional Transportation Council	PSRC	Puget Sound Regional Council	SRTC	Spokane Regional Transportation Council	YVCOG	Yakima Valley Conference of Governments	TRPC	Thurston Regional Planning Council	WCCOG	Whatcom County Council of Governments	CWCOG	Cowlitz-Wahkiakum Council of Governments
<u>Code</u>	<u>MPO</u>																		
BFCG	Benton-Franklin Council of Governments																		
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TRPC	Thurston Regional Planning Council																		
WCCOG	Whatcom County Council of Governments																		
CWCOG	Cowlitz-Wahkiakum Council of Governments																		
Total Estimated Cost	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Local Agency Funding	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Federal Funds	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Phase Start Date	Enter the month and year which expenditure for the phase will begin.																		

Description of Existing Facility

In one or two paragraphs, give a detailed description of the existing facility including but not limited to: (1) type, pavement, lane and shoulder width, horizontal and vertical alignment; and (2) condition of existing surfacing and roadway within project limits, and on adjacent sections at each end of the project. Note any substandard existing alignment and grade or other project deficiencies.

Description of Proposed Work

Check whether the project is new construction, 3-R or 2-R as described in Chapter 42. Explain the nature of the improvement proposed such as widening of existing roadway for additional lanes or left-turn channelization; or to provide signalization to an intersection. Give the purpose of the improvement, such as upgrade facility to current standards, or to remedy a hazardous situation, or reduce congestion. Indicate the major work involved, such as grading, surfacing, bridge construction, drainage, etc. Give a contact person for the project in case there are questions.

Design Approval

On all federal aid transportation projects, agencies should document a location and design report to the agency and should document any evidence prior to requesting approval to acquire right-of-way or the preparation of the PS&E.

A project design cannot be approved before the environmental considerations have been approved by FHWA.

In most cases, the Project Prospectus serves as the location and design report and this space is provided for the approving authority of a CA agency to sign and date indicating the location and design approval.

When there is a subsequent change to the project design, an amended location-design approval is required.

Geometric Design Data

Refer to design report data and/or Chapter 42.

Accidents

Enter the required accident information in the appropriate blanks according to the following definitions.

There are three categories of accidents differentiated by increasing degrees of severity — property damage, injury, and fatal. An accident, irrespective of the number of vehicles involved or the number of persons killed or injured, is entered as one accident and defined as follows:

- a. Property Damage Accident: If there is damage to one or more vehicles or property, with no injuries and no fatalities, this equals one property damage accident.
- b. Injury Accident: If one or more persons are injured, regardless of property damage, this equals one injury accident.
- c. Fatal Accident: If one or more persons are killed regardless of property damage, this equals one fatal accident.

Examples:

1. Vehicle leaves roadway and hits utility pole, but driver is not hurt.

Category: Property Damage Acc.

2. Vehicle slows on roadway, is hit from behind and pushed into vehicle ahead. Two persons are injured.

Category: Injury Accident (two persons injured)

3. Two vehicles collide at intersection and involve two other vehicles. Two people are killed, three occupants are injured, and one pedestrian is injured.

Category: Fatal Accident (two fatalities, four injuries)

If the above examples were all of the accidents for a location during a year, the total annual accident experience would indicate:

1	Property damage
1	Injury accident
1	Fatal accident
3	Accidents total
6	Persons injured
2	Persons killed

All accident, injury, and fatality information must be derived from official records.

Performance of Work

PE: Indicate who will be performing the work and the percentage of the work they will do.

CN: Indicate if work is to be done by contract and/or local forces and the percentage to be done by each.

Environmental Classification

Mark the appropriate NEPA class of the project as defined in Chapter 24.2.

Class I, if the nature of the proposed improvement is likely to have a significant impact on the environment and an "Environmental Impact Statement" (EIS) is required. Check the box pertaining to the NEPA/SEPA/Section 404 Interagency Agreement if the project requires an individual permit from the U.S. Corps of Engineers.*

Class II, if the project is not expected to have a significant impact on the environment and a "Categorical Exclusion" (CE) is determined. Completion of the Environmental Classification Summary (ESC) is required.*

Class III, when the significance of the impact on the environment is not clearly established and an "Environmental Assessment" (EA) will be required. Check the box pertaining to the NEPA/SEPA/Section 404 Interagency Agreement if the project requires an individual permit from the U.S. Corps of Engineers.*

***This includes a biological assessment effect determination for each project.**

Environmental Considerations

If the box for either a Class I or Class III category action is checked under the Environmental Classification section, make reference to the enclosed Environmental Classification Summary Form marked preliminary. If the project is a Class II "Projects That Require Documentation and FHWA Approval," make reference to the enclosed Environmental Classification Summary Form, if available at this time, or in a brief narrative, describe the environmental impact of the proposed project.

Right-of-Way Requirements

- a. No right-of-way required. Projects need only check no right-of-way.
- b. Right-of-way required. A Right-of-Way Project Funding Estimate or True Cost Estimate, a Right-of-Way Plan, and a Relocation Plan (if required).

If right-of-way acquisition becomes necessary on a job previously submitted as having no right-of-way, a Project Funding Estimate or True Cost Estimate would need to be submitted to the Regional Highways and Local Programs Engineer.

**Description of Utility Relocation or
Adjustments and Existing Major
Structures Involved**

Indicate the agency responsible for any relocation and/or adjustments.

- a. Existing utilities-type of utility, publicly or privately owned, and other pertinent information.
- b. Existing major structures — number, year built, overall length and conditions, roadway width, estimated or posted capacity, and proposed treatment of any substandard structures to remain in place.

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Appendix 21.44

List of County Code Numbers and WSDOT Region Numbers

<u>County Name</u>	<u>WSDOT Region</u>	<u>County Code Number</u>
*Adams	EAST	01
Asotin	SC	02
Benton	SC	03
Chelan	NC	04
Clallam	OLY	05
Clark	SW	06
*Columbia	SC	07
Cowlitz	SW	08
Douglas	NC	09
*Ferry	EAST	10
Franklin	SC	11
*Garfield	SC	12
Grant	NC	13
Grays Harbor	OLY	14
Island	NW	15
Jefferson	OLY	16
King	NW	17
Kitsap	OLY	18
Kittitas	SC	19
*Klickitat	SW	20
Lewis	SW	21
*Lincoln	EAST	22
Mason	OLY	23
*Okanogan	NC	24
*Pacific	SW	25
*Pend Oreille	EAST	26
Pierce	OLY	27
*San Juan	NW	28
Skagit	NW	29
*Skamania	SW	30
Snohomish	NW	31
Spokane	EAST	32
*Stevens	EAST	33
Thurston	OLY	34
*Wahkiakum	SW	35
Walla Walla	SC	36
Whatcom	NW	37
Whitman	EAST	38
Yakima	SC	39

*Counties without urban areas since 1980.

Appendix 21.45

List of City Code Numbers

<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>	<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>
Aberdeen	14	OLY	0005	Connell	11	SC	0265
Airway Heights	32	EAST	0010	Cosmopolis	14	OLY	0270
Albion	38	EAST	0015	Coulee City	13	NC	0275
Algona	17	NW	0020	Coulee Dam	24	NC	0280
Almira	22	EAST	0025	Coupeville	15	NW	0290
Anacortes	29	NW	0030	Covington	17	NW	0293
Arlington	31	NW	0045	Creston	22	EAST	0295
Asotin	02	SC	0050	Cusick	26	EAST	0300
Auburn	17	NW	0055				
Bainbridge Island	18	OLY	0058	Darrington	31	NW	0305
Battleground	06	SW	0060	Davenport	22	EAST	0310
Beaux Arts	17	NW	0070	Dayton	07	SC	0315
Bellevue	17	NW	0075	Deer Park	32	EAST	0320
Bellingham	37	NW	0080	Des Moines	17	NW	0325
Benton City	03	SC	0085	Dupont	27	OLY	0330
Bingen	20	SW	0090	Duvall	17	NW	0335
Black Diamond	17	NW	0095	East Wenatchee	09	NC	0350
Blaine	37	NW	0100	Eatonville	27	OLY	0360
Bonney Lake	27	OLY	0105	Edgewood	27	OLY	0362
Bothell	17, 31	NW	0110	Edmonds	31	NW	0365
Bremerton	18	OLY	0115	Electric City	13	NC	0375
Brewster	24	NC	0120	Ellensburg	19	SC	0380
Bridgeport	09	NC	0125	Elma	14	OLY	0385
Brier	31	NW	0127	Elmer City	24	NC	0390
Buckley	27	OLY	0130	Endicott	38	EAST	0395
Bucoda	34	OLY	0135	Entiat	04	NC	0405
Burien	17	NW	0138	Enumclaw	17	NW	0410
Burlington	29	NW	0140	Ephrata	13	NC	0415
				Everett	31	NW	0420
Camas	06	SW	0145	Everson	37	NW	0425
Carbonado	27	OLY	0150				
Carnation	17	NW	0155	Fairfield	32	EAST	0430
Cashmere	04	NC	0165	Farmington	38	EAST	0440
Castle Rock	08	SW	0170	Federal Way	17	NW	0443
Cathlamet	35	SW	0175	Ferndale	37	NW	0445
Centralia	21	SW	0180	Fife	27	OLY	0450
Chehalis	21	SW	0190	Fircrest	27	OLY	0455
Chelan	04	NC	0195	Forks	05	OLY	0465
Cheney	32	EAST	0200	Friday Harbor	28	NW	0470
Chewelah	33	EAST	0205				
Clarkston	02	SC	0215	Garfield	38	EAST	0480
Cle Elum	19	SC	0220	George	13	NC	0488
Clyde Hill	17	NW	0225	Gig Harbor	27	OLY	0490
Colfax	38	EAST	0230	Gold Bar	31	NW	0495
College Place	36	SC	0235	Goldendale	20	SW	0500
Colton	38	EAST	0240	Grand Coulee	13	NC	0510
Colville	33	EAST	0250	Grandview	39	SC	0515
Conconully	24	NC	0255	Granger	39	SC	0520
Concrete	29	NW	0260	Granite Falls	31	NW	0525

<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>	<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>
Hamilton	29	NW	0535	Metaline	26	EAST	0770
Harrah	39	SC	0540	Metaline Falls	26	EAST	0775
Harrington	22	EAST	0545	Mill Creek	31	NW	0778
Hartline	13	NC	0550	Millwood	32	EAST	0780
Hatton	01	EAST	0555	Milton	17,27	OLY	0785
Hoquiam	14	OLY	0560	Monroe	31	NW	0790
Hunts Point	17	NW	0570	Montesano	14	OLY	0795
				Morton	21	SW	0800
Ilwaco	25	SW	0575	Moses Lake	13	NC	0805
Index	31	NW	0580	Mossyrock	21	SW	0810
Ione	26	EAST	0585	Mount Vernon	29	NW	0820
Issaquah	17	NW	0590	Mountlake Terrace	31	NW	0815
				Moxee City	39	SC	0825
Kahlotus	11	SC	0595	Mukilteo	31	NW	0830
Kalama	08	SW	0600				
Kelso	08	SW	0605	Naches	39	SC	0835
Kenmore	17	NW	0609	Napavine	21	SW	0840
Kennewick	03	SC	0610	Nespelem	24	NC	0855
Kent	17	NW	0615	New Castle	17	NW	0858
Kettle Falls	33	EAST	0620	Newport	26	EAST	0860
Kirkland	17	NW	0625	Newport Hills	17	NW	0863
Kittitas	19	SC	0630	Nooksack	37	NW	0865
Krupp	13	NC	0635	Normandy Park	17	NW	0870
				North Bend	17	NW	0875
La Center	06	SW	0640	North Bonneville	30	SW	0880
La Conner	29	NW	0650	Northport	33	EAST	0885
La Crosse	38	EAST	0655				
Lacey	34	OLY	0643	Oak Harbor	15	NW	0895
Lake Forest Park	17	NW	0658	Oakesdale	38	EAST	0890
Lake Stevens	31	NW	0660	Oakville	14	OLY	0900
Lakewood	27	OLY	0665	Ocean Shores	14	OLY	0907
Lamont	38	EAST	0668	Odessa	22	EAST	0910
Langley	15	NW	0670	Okanogan	24	NC	0915
Latah	32	EAST	0675	Olympia	34	OLY	0920
Leavenworth	04	NC	0680	Omak	24	NC	0925
Lind	01	EAST	0685	Oroville	24	NC	0935
Long Beach	25	SW	0690	Orting	27	OLY	0940
Longview	08	SW	0695	Othello	01	NC	0945
Lyman	29	NW	0705				
Lynden	37	NW	0710	Pacific	17	NW	0950
Lynnwood	31	NW	0715	Palouse	38	EAST	0955
				Pasco	11	SC	0960
Mabton	39	SC	0725	Pateros	24	NC	0970
Malden	38	EAST	0730	PeEll	21	SW	0975
Mansfield	09	NC	0735	Pomeroy	12	SC	0985
Maple Valley	17	NW	0739	Port Angeles	05	OLY	0990
Marcus	33	EAST	0740	Port Orchard	18	OLY	1000
Marysville	31	NW	0745	Port Townsend	16	OLY	1005
Mattawa	13	NC	0750	Poulsbo	18	OLY	1010
McCleary	34	OLY	0720	Prescott	36	SC	1015
Medical Lake	32	EAST	0755	Prosser	03	SC	1020
Medina	17	NW	0760	Pullman	38	EAST	1025
Mercer Island	17	NW	0757	Puyallup	27	OLY	1030
Mesa	11	SC	0765				

<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>	<u>Place Name</u>	<u>County Code Number</u>	<u>WSDOT Region</u>	<u>City Code Number</u>
Quincy	13	NC	1040	Tacoma	27	OLY	1280
				Tekoa	38	EAST	1285
Rainier	34	OLY	1050	Tenino	34	OLY	1290
Raymond	25	SW	1055	Tieton	39	SC	1295
Reardan	22	EAST	1060	Toledo	21	SW	1300
Redmond	17	NW	1065	Tonasket	24	NC	1305
Renton	17	NW	1070	Toppenish	39	SC	1310
Republic	10	EAST	1075	Tukwila	17	NW	1320
Richland	03	SC	1080	Tumwater	34	OLY	1325
Ridgefield	06	SW	1085	Twisp	24	NC	1330
Ritzville	01	EAST	1090				
Riverside	24	NC	1095	Union Gap	39	SC	1335
Rock Island	09	NC	1105	Uniontown	38	EAST	1340
Rockford	32	EAST	1100	University Place	27	OLY	1343
Rosalia	38	EAST	1115				
Roslyn	19	SC	1120	Vader	21	SW	1345
Roy	27	OLY	1125	Vancouver	06	SW	1350
Royal City	13	NC	1127				
Ruston	27	OLY	1130	Waitsburg	36	SC	1360
				Walla Walla	36	SC	1365
St. John	38	EAST	1135	Wapato	39	SC	1375
Sammammish	17	NW	1136	Warden	13	NC	1380
SeaTac	17	NW	1139	Washougal	06	SW	1385
Seattle	17	NW	1140	Washtucna	01	EAST	1390
Sedro Woolley	29	NW	1150	Waterville	09	NC	1395
Selah	39	SC	1155	Waverly	32	EAST	1400
Sequim	05	OLY	1160	Wenatchee	04	NC	1405
Shelton	23	OLY	1165	West Richland	03	SC	1425
Shoreline	17	NW	1169	Westport	14	OLY	1420
Skykomish	17	NW	1175	White Salmon	20	SW	1435
Snohomish	31	NW	1180	Wilbur	22	EAST	1440
Snoqualmie	17	NW	1185	Wilkeson	27	OLY	1445
Soap Lake	13	NC	1190	Wilson Creek	13	NC	1450
South Bend	25	SW	1195	Winlock	21	SW	1455
South Cle Elum	19	SC	1205	Winslow	18	OLY	1460
South Prairie	27	OLY	1210	Winthrop	24	NC	1465
Spangle	32	EAST	1215	Woodinville	17	NW	1468
Spokane	32	EAST	1220	Woodland	08	SW	1470
Sprague	22	EAST	1225	Woodway	31	NW	1475
Springdale	33	EAST	1230				
Stanwood	31	NW	1235	Yacolt	06	SW	1480
Starbuck	07	SC	1240	Yakima	39	SC	1485
Steilacoom	27	OLY	1245	Yarrow Point	17	NW	1490
Stevenson	30	SW	1250	Yelm	34	OLY	1495
Sultan	31	NW	1255				
Sumas	37	NW	1265	Zillah	39	SC	1500
Sumner	27	OLY	1270				
Sunnyside	39	SC	1275				

- | | |
|-----------------------------------|------------------------------|
| 1. Seattle and Everett | 19. Oak Harbor |
| 2. Spokane | 20. Shelton |
| 3. Vancouver | 21. Anacortes |
| 4. Pasco, Kennewick, Richland | 22. Mount Vernon, Burlington |
| 5. Yakima, Union Gap, Selah | 23. Cheney |
| 6. Olympia, Lacey, Tumwater | 24. Sunnyside |
| 7. Bremerton, Port Orchard | 25. Ephrata |
| 8. Bellingham | 26. Clarkston |
| 9. Kelso, Longview | 27. Toppenish |
| 10. Aberdeen, Cosmopolis, Hoquiam | 28. Port Townsend |
| 11. Walla Walla, College Place | 29. Tacoma |
| 12. Pullman | 30. Sedro Woolley |
| 13. Wenatchee, East Wenatchee | 31. Grandview |
| 14. Port Angeles | 32. Enumclaw |
| 15. Centralia, Chehalis | 33. Ferndale |
| 16. Camas, Washougal | 34. Lynden |
| 17. Ellensburg | 35. Otis Orchards |
| 18. Moses Lake, Grant County | |



**Washington State
Department of Transportation**

Local Agency Federal Aid Project Prospectus

Prefix	Route	()
Federal Aid Project Number		Date
Local Agency Project Number	(WSDOT Use Only)	Federal Employer Tax ID Number
Agency		Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other
Project Title		
Project Termini From		To
From:	To:	Award Type <input type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad
Length of Project		
Federal Agency <input type="checkbox"/> FHWA <input type="checkbox"/> Others	City Number	County Number
		County Name
Congressional District	Legislative Districts	WSDOT Region
	Urban Area Number	TMA / MPO / RTPO

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date Month Year
P.E.				
R/W				
Const.				
Total				

Description of Existing Facility (Existing Design and Present Condition)	
Roadway Width	Number of Lanes

Description of Proposed Work		
<input type="checkbox"/> New Construction <input type="checkbox"/> 3-R <input type="checkbox"/> 2-R	Roadway Width	Number of Lanes
Local Agency Contact Person	Title	Phone
Mailing Address	City	State WA Zip Code
Design Approval (CA Agencies Only) By _____ Approving Authority Title _____ Date _____		

Agency	Project Title	Date
--------	---------------	------

Geometric Design Data

Description	Through Route	Crossroad
Federal Functional Classification	<input type="checkbox"/> Urban <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector </div>	<input type="checkbox"/> Urban <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector </div>
	<input type="checkbox"/> Rural <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road </div>	<input type="checkbox"/> Rural <div style="display: inline-block; vertical-align: top; margin-left: 10px;"> <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road </div>
Terrain	<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed		
Design Speed		
Existing ADT		
Design Year ADT		
Design Year		
Design Hourly Volume (DHV)		

Accident - 3 Year Experience

Year	Property Damage Accidents	Injury Accidents		Fatal Accidents		Total Number of Accidents
		Number of Accidents	Number of Injuries	Number of Accidents	Number of Fatalities	
Total Number of Accidents Attributable to Lack of having the Proposed Improvement						

Performance of Work

Preliminary Engineering Will Be Performed By	Others	Agency
	%	%
Construction Will Be Performed By	Contract	Agency
	%	%

Environmental Classification

☐ Final ☐ Preliminary

☐ Class I - Environmental Impact Statement (EIS)

☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement

☐ Class II - Categorically Excluded (CE)

☐ Projects Requiring Documentation (Documented CE)

☐ Class III - Environmental Assessment (EA)

☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement

Environmental Considerations

Agency	Project Title	Date
--------	---------------	------

Right of Way

☐ No Right of Way Required

* All construction required by the contract can be accomplished within the existing right of way.

☐ Right of Way Required

☐ No Relocation

☐ Relocation Required

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? ☐ Yes ☐ No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency _____

Date _____

By _____
Mayor/Chairperson

**FEDERAL-AID PROJECT PROSPECTUS
PLANNING SCOPE OF WORK**

Agency _____ Federal Aid Project Number _____

Project Title _____

Federal Funding Program _____ Amount _____

Matching Funds _____ Total Amount _____

Project Area

Background

Type of Study (check all that apply)

Region _____ Area _____ Corridor _____ Intersection _____

Design _____ Feasibility _____ Modeling _____

Other _____

Scope of Work

Public Involvement Plan

Environmental Considerations

TDM/TSM and Transit alternatives to be considered

Land Use Implications

Project schedule

Cost Breakdown by Task

Deliverable Final Products

22.1 General Discussion

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right-of-way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project. Appendix 22.45 is used if funds are not available for the local match.

If the federal aid participation ratio entered in the agreement is not the full amount allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the limit of funding allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement.

22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Regional Highways and Local Programs Engineer when the Project Prospectus (Chapter 21) is submitted. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted well in advance of the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority (Chapter 13). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Regional Highways and Local Programs Engineer.

An agreement form (WSDOT Form 140-039) is contained in Appendix 22.41, with instructions for completing it in Appendix 22.42. Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, and method of construction financing. These methods are described in Appendix 22.42.

Local agency resolutions or ordinances that may be needed are discussed in Appendix 22.42.

22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see Chapter 12). Projects that exceed the agreement amount at the time of construction contract award must receive written approval from the state for the additional federal funds required. This requires that the local agency prepare, sign, and submit a Supplemental Agreement to the Regional Highways and Local Programs Engineer before the approving authority concurs in the contract award.

A Supplemental Agreement form (WSDOT Form 140-041) is shown in Appendix 22.43, and instructions for completing it are given in Appendix 22.44. Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, and funding.

22.4 Appendixes

- 22.41 [Local Agency Agreement](#)
- 22.42 [Instructions for Preparing Local Agency Agreement](#)
- 22.43 [Local Agency Agreement Supplement](#)
- 22.44 [Instructions for Preparing Local Agency Agreement Supplement](#)
- 22.45 [Sample Withholding Resolution for Construction Financing Method B](#)

Forms

- DOT 140-039EF [Local Agency Sample Agreement](#)
- DOT 140-041EF [Local Agency Sample Agreement Supplement](#)



**Washington State
Department of Transportation**

Local Agency Agreement

Agency _____

Address _____

CFDA No. 20.205
(Catalog of Federal Domestic Assistance)

Project No. _____

Agreement No. _____

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name _____ Length _____

Termini _____

Description of Work

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE _____ % Federal Aid Participation Ratio for PE	a. Agency			
	b. Other			
	c. Other			
	d. State			
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way _____ % Federal Aid Participation Ratio for RW	f. Agency			
	g. Other			
	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction _____ % Federal Aid Participation Ratio for CN	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)			

Agency Official

By _____

Title _____

Washington State Department of Transportation

By _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

Construction Method of Financing (Check Method Selected)

State Aid and Award

- ☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Aid and Award

- ☐ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, _____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Transportation Equity Act for the 21st Century (TEA 21), as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

1. Preliminary Engineering, Right of Way Acquisition, and Audit Costs

The Agency will pay for Agency incurred costs on the project. Following such payments, vouchers shall be submitted to the State in the format prescribed by the State, in duplicate, not more than once per month. The State will reimburse the Agency up to the amount shown on the face of this agreement for those costs eligible for federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by WSDOT.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

2. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$300,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Assistant Secretary for Highways and Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

No liability shall attach to the State or Federal Government except as expressly provided herein.

XII. Nondiscrimination Provision

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 630, Subpart 305, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

.01 Agency Name and Billing Address. Enter the Agency of primary interest which will become a party to the agreement.

.02 Project Number. Leave blank. This number will be assigned by WSDOT.

.03 Agreement Number. Leave blank. This number will be assigned by WSDOT.

.04 Project Description. Enter the project name, total length of the project, and a brief description of the termini.

Example: (Name) Regal Road; (Length) 0.84 km (0.52 miles); (Termini) Tuscan Road to approx. 76.2 m (250 feet) south of Michan Road.

Below "Description of Work," enter a brief outline of the major items of work to be performed. Examples: (a) "Widening, channelization, curbs, gutters, illumination, and traffic signals." (b) "Right-of-way will be acquired by Agency forces."

.05 Type of Work and Funding.

a. PE. Lines a through d show Preliminary Engineering costs for the project by type of work.

*Federal aid participation ratio for PE — enter ratio for PE lines with amounts in column 3.

Line a — Enter the estimated amount of agency PE in columns 1 through 3.

Line b & c — Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line d — State Services. Every project must have funding for state services. Secure an estimate from the Regional Highways and Local Programs Engineer and enter in columns 1 through 3.

Line e — Total of lines a + b + c + d.

b. Right-of-Way. If Right-of-Way is acquired on the project, the appropriate costs are shown in lines f through h.

*Federal aid participation ratio for R/W — enter ratio for R/W lines with amounts in column 3.

Line f — Enter the estimated amount of agency work in columns 1 through 3.

Line g & h — Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line i — State Services. If state services are required in the acquisition, enter the estimated amounts in columns 1 through 3.

Line j — Total of lines f + g + h + i.

c. Construction.

*Federal aid participation ratio for CN — enter ratio for CN lines with amounts in column 3.

Line k — Enter the estimated cost of the contract.

Lines l & m & n — Enter other estimated costs such as utility and construction contracts or non-federally matched contract costs.

Line o — Enter estimated costs of all construction related agency work.

Line p — State force. Every project must have funds set up for state force work. Contact the Regional Highways and Local Programs Engineer for an estimate and record in columns 1 through 3.

Line q — Total Construction Cost Estimate. Total of lines k + l + m + n + o + p.

Line r — Total Cost Estimate of the Project. Total of lines e + j + q.

*Please remember, if the federal aid participation rate entered is not the full amount allowed by FHWA, then the participation rate entered becomes the maximum amount allowed.

.06 Signatures. An authorized official of the local agency signs the agreement, and writes in their title.

.07 Method of Construction Financing. Choose the method of financing the construction portion of the project.

- a. Method “A” is used when the state administers the contract for the agency. At the time of contract award, the state will direct the agency to deposit with the state an advance in the amount of the agency’s share of the total construction costs (based on the actual contract award rather than the amount listed in the agreement). If this works a hardship on the agency, a smaller sum may be negotiated through the Regional Highways and Local Programs Engineer.
- b. Method “B” is also used when the state administers the contract for the agency. At the time of award, the state will notify the agency that withholding of its monthly fuel-tax allotments is to commence in accordance with the terms specified on the face of the agreement. The agency will specify the number of months over which allotments will be withheld. This period is not to exceed the length of the construction phase of the project. The monthly withholding amount is calculated by dividing the number of months into the total construction cost of the project entered in Column 2, line q of the ESTIMATE OF FUNDING box.
- c. Method “C” is used with projects administered by the local agency. The agency may pay all costs on the project pending federal reimbursement, or submit billings through the state to FHWA for all eligible costs. The billings must document the payment requests from the contractor. If state-force work, such as audit and construction engineering, is to receive federal participation, it will be billed to the agency and FHWA simultaneously at the indicated ratio.

.08 Resolutions/Ordinances. When someone other than the County Executive/Chairman, County Commissioners/Mayor is authorized to sign the agreement, the agency must submit to WSDOT with the agreement a copy of the Resolution/Ordinance designating that individual.

When using Method “B” for construction financing, the local agency officials must execute a Resolution/Ordinance in the form of Appendix 22.45 authorizing the withholding of funds from the monthly fuel-tax distribution. The Local Agency Agreement becomes the Resolution/Ordinance which specifies the amount and the months of withholding. Submit a copy of this Resolution/Ordinance with the agreement.

.09 Parties to the Agreement. Submit one originally signed agreement form to the Regional Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their files. The agreement is first executed by the agency official(s) authorized to enter into the agreement. It is then transmitted to the state for execution by the Assistant Secretary for Highways and Local Programs. The agreement is dated at the time of final execution by the Department.



Washington State
Department of Transportation

Local Agency Agreement Supplement

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

The Local Agency desires to supplement the agreement entered into and executed on _____.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description

Name _____ Length _____

Termini _____

Description of Work ☐ No Change

Reason for Supplement

Type of Work	Estimate of Funding				
	(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE					
_____ % a. Agency					
b. Other					
c. Other					
Federal Aid Participation Ratio for PE d. State					
e. Total PE Cost Estimate (a+b+c+d)					
Right of Way					
_____ % f. Agency					
g. Other					
Federal Aid Participation Ratio for RW h. Other					
i. State					
j. Total R/W Cost Estimate (f+g+h+i)					
Construction					
k. Contract					
l. Other					
m. Other					
n. Other					
_____ % o. Agency					
Federal Aid Participation Ratio for CN p. State					
q. Total CN Cost Estimate (k+l+m+n+o+p)					
r. Total Project Cost Estimate (e+j+q)					

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

By _____

Title _____

Washington State Department of Transportation

By _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

DOT Form 140-041 EF
Revised 4/2000

- .01 Agency.** Enter the agency name as entered on the original agreement.
- .02 Supplemental Number.** Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
- .03 Project Number.** Enter the federal aid project number assigned by WSDOT on the original agreement.
- .04 Agreement Number.** Enter the agreement number assigned by WSDOT on the original agreement.
- .05 Execution Date.** Enter date the original agreement was executed on.
- .06 Project Description.** Enter the project name, length, and termini.
- .07 Description of Work.** Clearly describe if there is a change in work. If the work has not changed, put a check mark in the "No Change" box.
- .08 Reason for Supplement.** Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount, etc.
- .09 Type of Work and Funding.** Complete this section in the manner described in Appendix 22.42, Paragraph .05.
- a. Column 1 Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts from column 3 of the last supplemental agreement.
 - b. Column 2 Enter additional amounts requested.
 - c. Column 3 Add the amounts in columns 1 and 2.
 - d. Columns 4 and 5 Enter the appropriate amounts based on the participation ratio recorded on the original agreement.
- .10 Signatures.** An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Regional Highways and Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.

ORDINANCE/RESOLUTION NO. _____

WHEREAS, under and by the virtue of the terms of that certain Agreement and entered into by and between the Local Agency of _____, hereinafter designated as the "LOCAL AGENCY" and the State of Washington, acting through its Department of Transportation and the Secretary thereof, under the date of _____, 19 _____, the State will act as agent for the LOCAL AGENCY in the participation of said LOCAL AGENCY with the Federal Highway Administration under the provisions of the Federal-aid Highway Title 23 United States Code for the construction of Federal-aid Project No. _____, copy of which Agreement is hereunto attached, now referred to and by such reference incorporated herein and made a part hereof, now, therefore,

BE IT HEREBY RESOLVED that said Agreement be and the same is hereby ratified and approved; and

BE IT FURTHER RESOLVED that authorization is hereby granted for the reservation of amount of _____ Dollars (\$ _____) from monthly fuel tax allotments, being an amount not in excess of the money reasonably anticipated to accrue to the LOCAL AGENCY in the Motor Vehicle Fund during the current or future biennium(s) as the balance of the estimated participating share and costs of the LOCAL AGENCY in the above mentioned project, for the use of the Secretary of Transportation to defray the costs incurred in the performance of the aforesaid requested work; and upon completion of the aforesaid work, payment having been made therefor, and a statement having been furnished to the LOCAL AGENCY, authorization is made to release to the LOCAL AGENCY any unexpected balance of the amount reserved by this Ordinance/Resolution.

BE IT FURTHER RESOLVED that the (Director of Public Works, Local Agency Engineer, other Agency official) is hereby authorized to establish the months in which the withholding shall take place and the exact amount to be withheld each month up to _____ percent over the amount indicated for construction in this Agreement as determined by open competitive bidding, at contract award.

Dated this _____ day of _____, 19 _____.

(SEAL)

Attest:

_____ Clerk



Agency Clark County

Address PO Box 9810

Vancouver, WA 98666-9810

CFDA No. 20.205
(Catalog of Federal Domestic Assistance)

Project No. _____

Agreement No. _____

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name NE Ward Road Length 1.20 Miles

Termini SR 500 to NE 162nd Avenue

Description of Work

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE _____% Federal Aid Participation Ratio for PE	a. Agency	82,000.00	11,070.00	70,930.00
	b. Other Consultant	469,000.00	63,315.00	405,685.00
	c. Other			
	d. State	1,000.00	135.00	865.00
	e. Total PE Cost Estimate (a+b+c+d)	552,000.00	74,520.00	477,480.00
Right of Way _____% Federal Aid Participation Ratio for RW	f. Agency			
	g. Other			
	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction _____% Federal Aid Participation Ratio for CN	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)	552,000.00	74,520.00	477,480.00

Agency Official

By _____

Title _____

Washington State Department of Transportation

By _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

Construction Method of Financing (Check Method Selected)

State Ad and Award

- ☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- ☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of
- \$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- ☐ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, _____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Transportation Equity Act for the 21st Century (TEA 21), as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

1. Preliminary Engineering, Right of Way Acquisition, and Audit Costs

The Agency will pay for Agency incurred costs on the project. Following such payments, vouchers shall be submitted to the State in the format prescribed by the State, in duplicate, not more than once per month. The State will reimburse the Agency up to the amount shown on the face of this agreement for those costs eligible for federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by WSDOT.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

2. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$300,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Assistant Secretary for Highways and Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

No liability shall attach to the State or Federal Government except as expressly provided herein.

XII. Nondiscrimination Provision

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

(1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 630, Subpart 305, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.

- (4) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

Local Agency Agreement Supplement

Agency Thruston County Roads & Transportation Services		Supplement Number 1
Federal Aid Project Number BRS-U340(003)	Agreement Number LA-2282	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

The Local Agency desires to supplement the agreement entered into and executed on October 15, 1993.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description

Name Martin Way Bridge M-14 Length 0.10 Miles

Termini MP 6.99 to MP 7.09

Description of Work ☒ No Change

Reason for Supplement

Request additional PE funds for consultant services. Request construction funding.

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE _____% Federal Aid Participation Ratio for PE	a. Agency	34,400.00	-12,400.00	22,000.00	4,400.00	17,600.00
	b. Other Consultant	15,000.00	44,365.00	59,365.00	11,873.00	47,492.00
	c. Other					
	d. State	1,000.00		1,000.00	200.00	800.00
	e. Total PE Cost Estimate (a+b+c+d)	50,400.00	31,965.00	82,365.00	16,473.00	65,892.00
Right of Way _____% Federal Aid Participation Ratio for RW	f. Agency					
	g. Other					
	h. Other					
	i. State					
	j. Total R/W Cost Estimate (f+g+h+i)					
Construction _____% Federal Aid Participation Ratio for CN	k. Contract		757,000.00	757,000.00	151,400.00	605,600.00
	l. Other					
	m. Other					
	n. Other					
	o. Agency		76,000.00	76,000.00	15,200.00	60,800.00
	p. State		23,000.00	23,000.00	4,600.00	18,400.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)		856,000.00	856,000.00	171,200.00	684,800.00
	r. Total Project Cost Estimate (e+j+q)	50,400.00	887,965.00	938,365.00	187,673.00	750,692.00

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

Washington State Department of Transportation

By _____

By _____

Title _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

23.1 General Discussion

All progress billings shall be submitted to the Regional Highways and Local Programs Engineer by the local agency in accordance with the terms of the Local Agency Agreement (Chapter 22). Billings will not be accepted before the Local Agency Agreement is executed and authorization in writing has been received from the Washington State Department of Transportation (WSDOT).

The execution of the Local Agency Agreement does not constitute approval of federal funds. This authorization from WSDOT is separate from the Local Agency Agreement.

The Local Agency Agreement, when completed, establishes a work order account which permits billing to the project. The Work Order Accounting Plan (WOAP) and the work order ledger may be seen at the region office where the Regional Highways and Local Programs Engineer can answer questions pertaining to these items.

WSDOT assigns a contract number on all federal aid construction projects. This number identifies the project. It should be used in addition to the federal aid project number when corresponding with WSDOT.

23.2 Billing Procedures for Local Agency Ad and Award and Agency Force Work

Once the Assistant Secretary for Highways and Local Programs has executed the Local Agency Agreement and WSDOT has given the local agency written authority to proceed, the agency submits progress billings for each phase of work. Any work that is performed before the official authorization date does not qualify for federal participation. Progress billings are submitted as follows:

1. Olympia Service Center Highways and Local Programs sends the local agency the original fund authorization letter.
2. The agency submits a request for payment to the Regional Highways and Local Programs Engineer in accordance with the Local Agency Agreement. The PPC2 (Appendix 23.61) may be submitted by hard copy or electronically via e-mail. (Contact the Regional Highways and Local Programs Engineer)

Final bills must be submitted by hard copy.

The form must be completed in accordance with the instruction outlined in Appendix 23.62.

23.3 Billing Procedures for State Ad and Award

Progress billings are submitted as follows:

- Requests for payment from contractors are submitted to the Regional Administrator in accordance with the Local Agency Agreement.
- The requests will be processed in the region using standard WSDOT procedures.

23.4 Number and Timing of Submittals

Progress billings will be numbered sequentially and submitted not more than once per month.

If the billing is prepared properly, payment should normally be received within three weeks of submittal. If payment is not received within one month, the agency should contact the Regional Highways and Local Programs Engineer.

23.5 Identification of Federal Aid Participating and Nonparticipating Charges

Reimbursement of costs eligible for Federal Highway Administration's (FHWA) participation are provided under Title 23 of the United States Code. The following is an overview of participating and nonparticipating charges by FHWA.

- a. Participating (Eligible for Federal Aid). The following criteria must be met for charges to be considered participating when charged directly to a federal aid project:
 - The work must be programmed with FHWA.
 - **The costs must have been incurred after the date of FHWA authorization to proceed with the work.**
 - The costs must be wholly for the benefit of the project being charged, e.g., labor performed directly for that project, supplies used up in the course of a project, etc.

Examples of federal aid participations follow. This list is not limiting or all-inclusive.

1. Labor — to design, survey, prepare plans, appraise right-of-way, inspect construction activities, audit agreements, etc. (refer to Section 23.52a).
2. Travel and Per Diem — of employees involved in any participating activity related to the project (refer to Section 23.52b).
3. Materials — incorporated into a federally approved project (refer to Section 23.53b-4).

4. Supplies — purchased and consumed entirely on a federally approved project. Supplies might include: cloth tapes, cylinder molds, drafting supplies, film including developing and printing, hubs, paint (marking spray), stakes, long distance telephone calls identified by project, royalty on materials, initial or new costs of temporary traffic control devices.
 5. Services for material testing, document reproduction, mapping, computer, and equipment usage charges. All of these will be based upon rates set by FHWA.
- b. Nonparticipating. For specific projects, the following items are not eligible for federal aid participation:
1. Equipment Purchase and Repair — unless specifically approved by FHWA, e.g., engineering, safety, or office equipment and supplies (refer to Section 23.53b-5).
 2. Supplies — purchased and consumed on a number of projects or for the general management or operation of the organizational unit (example would be in maintenance or in administration — signs, small tools, and used temporary traffic control devices).
 3. Office Rental — including utilities and telephone service.
 4. Labor — for activities not directly related to the project nor programmed with FHWA. Labor activities pertaining to the general operation of an agency are not eligible for federal participating.
 5. Travel and Per Diem — of employees performing activities classified as nonparticipating or unrelated to a specific federal aid project.

.51 Participating Functions. Classifications of work programmed with FHWA and eligible for federal aid:

- a. Preliminary Engineering. The work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates, centerline, right-of-way plan preparation and other related preliminary work and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction. The work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right-of-way cost estimates, legal, and other costs incidental to the location and design of a highway project necessitating the acquisition of right-of-way thereon up to but not including the appraisal of individual parcels for acquisition purposes.

These engineering costs are generally incurred prior to the date of construction PS&E approval or the date construction plan changes are completed prior to the beginning of construction. The date of contract award is the cutoff for charging to preliminary engineering.

During the construction phase of a project when a major change takes place that requires additional design or PE effort, the appropriate job can be reopened on a case-by-case basis after approval from FHWA.

Also, any construction staking done in advance of the award should be charged to construction engineering, not PE.

- b. Acquisition of Rights-of-Way. The continuation of preparation of right-of-way plans; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.
- Excess land (appraised value) including uneconomic remnants.
 - Improvements (appraised salvage value).
 - Right-of-way acquired after certification by the local agency that right-of-way necessary for a designated federal aid highway project has been acquired.
 - Judgments in condemnation cases not appealed when the attorney's closing report indicates a basis for appeal. The amount in excess of the review appraiser's determination of value is nonparticipating.
 - Landowners:
 - Attorneys' fees;
 - Witness fees;
 - Expert witness fees; or
 - Similar costs to a landowner based on value of the services rendered to him which are paid by the local agency in connection with acquisition of rights-of-way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.
- c. Construction Engineering. The work of supervising construction activities; the inspection of construction and related mechanical aspects (e.g., staking necessary to review construction plans together with those staking activities necessary for the local agency to control construction operations); testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of progress and final estimates, and as-built drawings. Construction engineering costs are generally incurred only after approval of the PS&E, a contract number is issued, and also incurred prior to:

- Completion date of the final contract pay estimate and its submission to the contractor;
 - The final date of charges for required material testing; or
 - Completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.
- d. Highway Planning. The orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.
- e. Research and Development. The search for more complete knowledge of the characteristics of the highway system and the translation of the results of research into practice.
- f. Administrative Settlement Costs-Contract Claims. Services related to the review and defense of claims against federal aid projects.
- g. Miscellaneous Functions. Costs incurred for other activities which are properly attributable to, and for the benefit of, federal aid projects but are not assignable to any of the previously defined functions.
- h. Construction Costs for Other Than Contractor Payments.
- Royalty expenses for material furnished by the local agency that are used by the contractor.
 - Temporary signs, traffic control labor, traffic control devices, and temporary illumination furnished by the local agency. The initial basic cost of traffic control devices purchased for use on the project is an authorized participating cost. When used items are furnished by the local agency, federal participation will not be requested.
 - Striping and pavement marking work performed by local forces.
 - Second stage fertilizing by local forces. Application of second-stage seeding and fertilizer, after other work on the project has been completed and the contractor has been released from the contract, is eligible for federal participation.

All costs for the fertilizer and the application by local forces are carried as below the line expense on the preliminary estimate and will be fully eligible for the appropriate matching federal funds.
 - Other Items. Items not identified herein as eligible for federal aid participation, such as construction engineering costs, material furnished by the local

agency, work performed by local forces, are eligible for participation in accordance with Sections 23.52 and 23.53 below.

.52 Standards for Selected Items of Costs. The following are standards for determining the allowability of selected items of cost. In general, costs must be reasonable, necessary, and allocable to the specific project. The allowability of the selected items of cost is subject to the general policies and principles stated above.

- a. Salaries and Wages.
1. Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.
 2. Salaries, wages, and related payroll expenses of a local agency for maintenance, general administration, supervision and other overhead are not eligible for reimbursement except as provided for in Section 23.52 e 2.
- b. Travel and Transportation.
1. Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence essential to the prosecution of the project and is performed in accordance with prescribed procedures.
 2. Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy of the local agency.
- c. Employee Leave and Holidays.
1. A local agency may claim reimbursement for the costs of leave, e.g., annual, sick, military, jury, etc., that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the local agency, must be equitably distributed to all activities, and the pro rata costs distributed to a federal aid project must be representative of the amount that is earned and accrued while working on the project.
 2. Compensatory leave granted by a local agency in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.
 3. Costs for other leave of a similar nature which may be peculiar to a specific local agency may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

- d. Social Security, Retirement, and Other Payroll Benefits.
 1. Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in federal aid projects.
 2. The costs for such benefits must be a liability of the local agency and must meet the criteria set forth in paragraph 1 of c above.
- e. General Administration and Other Overhead Costs Are Not Allowed.
 1. General administration, supervision, and other unallowable overhead costs of a local agency are those considered necessary for the management, supervision, and administrative control of a suitably equipped, staffed, and operational agency. Examples of such unallowable costs may include, but are not limited to, the following types of personnel, related payroll benefit costs, and other administrative or support services (refer to CFR 23.1.11):
 - Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.
 - Related clerical, secretarial, and other support services for officials and personnel listed immediately above.
 - Management, supervision, and administrative overhead costs incurred by other units or departments of the state, local agencies, or governmental organizations.
 2. Costs incurred for services rendered by employees generally classified as administrative may, however, be considered eligible for reimbursement for:
 - A highway planning unit and a research development unit, in the ratio of time spent on the participating portion of work in the unit to the total unit's working hours; and
 - Other operating units if such employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as other operating personnel.
- f. Use of Cost Accumulation Centers and Cost Distribution Methods.
 1. Cost accumulation centers, i.e., cost centers, cost pools, or other acceptable cost accumulation methods, may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was per-

formed during the accounting period. The accounting and cost distribution procedures must be in accordance with paragraph (2) of this section for types of costs incurred under the following general criteria:

- Salaries, wages, and related payroll benefit costs may be incurred during a payroll accounting period which affects a number of projects and, therefore, may not be easily adaptable to charging directly to individual projects due to such factors as (i) incompatibility of time increments for individual projects; (ii) an inordinate amount of time or an additional number of documents to provide separate project coding; or (iii) a documented reduction of overhead costs in the elimination of processing source and coding required, increased electronic data processing applications, and additional accounting requirements.
 - Small cost items may be incurred which affect several projects and would result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.
 - Items of costs may otherwise be eligible for reimbursement but, due to their nature and the small amounts involved, they are not being claimed for reimbursement, since the additional overhead costs required for separate project coding and effective internal controls are not cost beneficial relative to separate project reimbursable amounts.
 - Cost items must be directly attributable to and properly allocable to the projects to which they are distributed. They must not lose their identity, i.e., type, amount, purpose for which incurred, whether federally participating, input source, etc.
2. The use of separate cost accumulation centers for comparably related types of costs is a prerequisite to the use of percentages, or other acceptable distribution methods, for cost distribution to benefiting projects or other activities. The accounting procedures and methods of distribution used must have prior concurrence of the FHWA, be representative of average actual costs, and must assure that (1) costs are uniformly and equitably distributed to all projects and activities for which work was performed during the accounting period irrespective of source of funds, (2) provisions are established for an adequate segregation of costs and separate distribution methods for similarly related types of costs, (3) actual costs and liabilities are fully

accounted for and controlled, and (4) that reviews are made periodically, and the rates or other distribution methods are adjusted at least once annually by any over or underdistributed accumulated costs from the cost accumulation center for the preceding accounting period.

3. Percentages representative of average actual costs may be used to distribute leave, social security, and other payroll benefits. Such rates are based on prior cost experience adjusted by anticipated known factors which will affect overall costs during the current year, e.g., scheduled salary increases, changes anticipated in insurance premiums, etc.

g. Audit Expense.

AUTHORITY: 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

SOURCE: 49 FR 45578, Nov. 19, 1984, unless otherwise noted.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable federal laws and regulations are eligible for federal participation.

The local agency may use other state, local public agency, and federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

Audits performed in accordance with the requirements of 23 CFR Part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for local agency management use only, or those serving similar nonfederal purposes are not considered project related.

1. Federal funds may be used to reimburse a local agency for the following types of project related audit costs:
 - Salaries, wages, and related costs paid to public employees in accordance with Section 23.52 a;
 - Payments by the local agency to any federal, state, or local public agency audit organization; and
 - Payments by the local agency to licensed or certified public accounting firms.
2. Audit costs incurred by a local agency shall be equitably distributed to all benefiting parties. The portion of these costs allocated to the Federal Aid Highway Program which are not directly related

to a specific project or projects shall be equitably distributed, as a minimum, to the major FHWA funding categories in that state.

h. Administrative Settlement Cost — Contract Claims.

AUTHORITY: 23 U.S.C. 121, 315; 49 CFR 1.48(b); and OMB Circular A-102, Attachment G, Standard 2 (h) and (i).

SOURCE: 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or their authorized representative, attorneys, and/or members of state boards of arbitration, appeals boards, or similar tribunals. These costs are allocable to the findings and determinations of contract claims, but they do not include administrative or overhead costs.

1. Federal funds may participate in administrative settlement costs which are:
 - Incurred after notice of claim;
 - Properly supported;
 - Directly allocable to a specific federal aid or federal project;
 - For employment of special counsel for review and defense of contract claims, when
 - (a) Recommended by the State Attorney General or local agency legal counsel; and
 - (b) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel; and
 - For travel and transportation expenses, if in accord with established policy and practices.
2. No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by local agency officials with respect to the claim.

.53 Utility Relocations, Adjustments, and Reimbursement.

a. Eligibility.

1. When requested by the local agency federal funds may participate, at the pro rata share applicable, in an amount actually paid by a local agency for the costs of utility relocations. Federal participation is subject to the provisions of §645.103(d) of 23 CFR and may be made under one or more of the following conditions when:
 - The local agency certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other

- real property interest, the damaging or taking of which is compensable in eminent domain;
- The utility occupies privately or publicly owned land, including public road or street right-of-way, and the local agency certifies that the payment is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C.123; and/or
 - The utility occupies publicly owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the state, and is not required by law or agreement to move at its own expense, and the local agency certifies that it has the legal authority or obligation to make such payments.
2. When the local agency has the authority to participate in project costs, federal funds may not participate in payments made by a political subdivision for relocation of utility facilities when state law prohibits the local agency from making payment for relocation of utility facilities.
 3. When the local agency does not have the authority to participate in project costs, federal funds may participate in payments made by a political subdivision for relocation of utility facilities. Such payment may be made when the local agency certifies that the payment is based upon the provisions of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the local agency.
 4. Federal funds are not eligible to participate in any costs for which the utility contributes or repays the local agency except for utilities owned by the political subdivision on projects which qualify under the provisions of (3) of this part in which case the costs of the utility are considered to be costs of the local agency.
 5. The FHWA may deny federal fund participation in any payments made by a local agency for the relocation of utility facilities when such payments do not constitute a suitable basis for federal fund participation under the provisions of Title 23, U.S.C.
 6. The rights of any public agency or political subdivision of a state under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the local agency in the absence of state law to the contrary.
 7. In lieu of the individual certifications required by a-1, the local agency may file a statement with the FHWA setting forth the conditions under which the local agency will make payments for the relocation of utility facilities. The FHWA may approve federal fund participation in utility relocations proposed by the local agency under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for federal fund participation under the provisions of 23 U.S.C. 123.
 8. Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.
 9. When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the local agency, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to FHWA authorization of the work. Subject to the other provisions of this regulation, federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.
 10. Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the local agency to proceed in accordance with 23 CFR 630, Subpart A, Federal Aid Programs Approval and Project Authorization.
- b. Cost Development and Reimbursement.
 1. Developing and recording costs. All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of

developing and recording costs, such as lump-sum agreement, has been approved by the local agency and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which federal participation may be based.

Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

2. Direct labor costs. See Section 23.52 a.
3. Labor surcharges. See Section 23.52 a.
4. Material and supply costs. Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:
 - Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at the time of issue.
 - Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.
 - A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

- The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided the rehabilitation costs do not exceed replacement costs.

Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a 10 percent consideration for loss in service life. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the local agency or utility following an opportunity for local agency inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

Federal participation may be approved for the total costs of removal when such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway contractor elects to remove and recover the materials, federal funds shall not participate in removal costs which exceed the value of the materials removed.

The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates representative of actual costs may be used if approved by the local agency and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards, or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

5. Equipment costs. The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement

will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (1) and (2) of this section are impractical due to project location or schedule.

6. Transportation costs. The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

Reasonable costs for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

7. Billings. After the FHWA approves the executed local agency/utility agreement, the utility may be reimbursed through the local agency by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed local agency/utility agreement.

The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the local agency that the work is complete, acceptable, and in accordance with the terms of the agreement.

All utility cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three years from the date final payment has been received by the utility.

.54 Reimbursement for Railroad Work.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 16057, April 9, 1975, unless otherwise noted.

- a. Applicability. This subpart, and all references hereinafter made to "projects," applies to federal aid projects for the elimination of hazards of railroad highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.
- b. Reimbursement Basis.
 1. General. On projects involving the elimination of hazards of railroad highway crossings, and on

other projects where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred in making changes to railroad facilities, required in connection with a federal aid highway project, as hereinafter provided.

2. Eligibility. To be eligible, the costs must be:

- For work which is included in an approved program;
- Incurred subsequent to the date of authorization by the FHWA;
- Incurred in accordance with the provisions of 23 CFR, Part 646, Subpart B; and
- Properly attributable to the project.

- c. Labor costs. (See Section 23.52.)

- d. Materials and Supplies. (See Section 23.53 b 4.)

- e. Equipment. (See Section 23.53 b 5.)

- f. Transportation. (See Section 23.53 b 6.)

- g. Credits for Improvements.

1. Credit shall be made to the project for additions or improvements which provide higher quality or increased service capability of the operating facility, and which are provided solely for the benefit of the company.
2. Where buildings and other depreciable company structures integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).
3. No credit is required for additions or improvements which are:
 - Necessitated by the requirements of the highway project.
 - Replacement which, although not identical, are of equivalent standard.
 - Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.
 - Required by governmental and appropriate regulatory commission requirements.
4. Protection. The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the railroad agreement or in a work order issued by the local agency and approved by FHWA.

- i. Maintenance and Extended Construction. The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(f)(4), and where included in the State Railroad Agreement or otherwise approved by the state and FHWA.
- j. Lump Sum Payments. Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.
- k. Billings. (See Section 23.53 b 7.)

.55 Other Costs Allowable Subject to FHWA's Approval.

Although some category of expenditures are not mentioned specifically in Part 140, "Reimbursement," of 23 CFR as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

.56 Other Unallowable Costs.

- Bad debts. Any losses arising from uncollectible accounts and other claims and related costs are not allowable.
- Contingencies. Contributions to a contingency reserve or any similar provisions for unforeseen events are unallowable.
- Contributions and Donations. Unallowable.
- Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

- Fines and Penalties. Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations are unallowable.
- Governor's Expenses. The salaries and expense of the office of the governor of a state or the chief executive of a political subdivision are considered a cost of general state or local government and are unallowable.
- Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by federal legislation.
- Legislative Expenses. Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.
- Underrecovery of Costs Under Grant Agreements. Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements.

23.6 Appendixes

- 23.61 [Sample Form PPC2, "Federal Aid Request for Payment"](#)
- 23.62 [Instructions for Completing Form PPC2](#)

		Federal Aid Progress Billing						Progress Bill No: Final Progress Bill? <input type="checkbox"/>
		Federal Aid Project: Agreement Number: _____		LA- _____		Billing Period from: _____ through: _____		
		Last Supplement: _____						
		Project Title: _____						
	1	2	3	4	5	6	7	8
	Total Eligible This Period	Total Eligible To Date	Participation Rate	Amount Claimed This Period <i>Col 1 x Col 3</i>	Amount Claimed Prior Periods	Total Claimed To Date <i>Col 4 + Col 5</i>	Amount Authorized Per Agreement	Remaining Federal Funds <i>Col 7 - Col 6</i>
PE								
<i>Total Preliminary Engineering</i>								
RW								
<i>Total Right of Way</i>								
CN								
CE								
<i>Total Construction</i>								
TOTAL PROJECT								

Submission of this request for payment certifies that in accordance with the laws of the State of Washington and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible for the purposes specified; also, that no other claims have been presented to, or payment made by, the State of Washington for those costs claimed for reimbursement.

Signee	Title	Date	Approved by Regional Local Programs Office	Date	Revised 04/04/00
Return to Regional Local Programs Office					

This form only reflects the amounts claimed and authorized for payment to the local agency. It does not include costs for state services.

Distribution of Form

After the Fund Authorization letter is received by the agency, a blank PPC2 form should be filled out for the first progress billing. Highways and Local Programs will include subsequent progress billing forms for the agency as an attachment to the payment voucher from WSDOT when payment for the previous billing is made.

Funding Set Up

The amount of federal funding set up for a project is based on the local agency agreement. The funding set up for each line item is shown in column (7). Column (7) should be compared with column (6) to ensure that the amounts requested are within the funding amount set up by the local agency agreement.

Payments will not be made in excess at the amount in column (7). If the amount in column (6) exceeds the amount shown in column (7), a supplement to the local agency agreement must be submitted to reflect the revised cost before payment can be made.

Exception: On a progress bill marked as Final, the amounts in column (6) may exceed the amounts in column (7), provided the total of column (6) does not exceed the total of column (7). Only one billing will be accepted as final.

Data Required to Request Payment

As a minimum, only those line items for which payment is being requested need to be coded. The other lines can be left blank. The agency's Federal Tax ID is always required.

Coding Instructions

The PPC2 is arranged in the same manner as the local agency agreement though not all lines from the local agency agreement are shown on the PPC2. The lines for state services are not included because state costs are billed separately. Since the state services are not shown, the totals for PE, R/W, and Construction shown on the PPC2 will not agree with those shown on the local agency agreement. The PPC2 totals will reflect the total amount available to the local agency based on the local agency agreement.

The top portion of the form includes project identification information that will automatically appear on each progress billing. This information includes: Agency, Agreement No., Federal Aid No., Title, Progress Bill No., and Billing Period. Please provide dates for the current billing period and indicate whether the billing represents a final voucher for PE, R/W, or Construction in the spaces provided. Enter the estimated amount of project completion in percent for the applicable phase.

A space has been provided for an "Agency Billing Identification" number. This **eight character** item is for the agency's use and is not required to receive payment. You may enter any combination of alphabetic and numeric symbols. This number will be used to identify each billing on the Vendor's Remittance Advice which is transmitted to agencies receiving Electronic Fund Transfers (EFT). The number will appear in the "Invoice Number" block on the Vendor's Remittance Advice.

- | | |
|---------------|--|
| Line a | — Agency work for PE.

Eligible PE cost incurred by the local agency. |
| Line b | — Other — For PE

Same as shown on agreement, usually consultant cost paid by local agency. |
| Total PE | — The sum of lines a and b equals the total amount claimed and authorized for payment to the local agency.

Column (7) on this line shows the total amount of funds set up for the local agency based on the latest version of the Local Agency Agreement. It does not include state services. |
| Line e | — Agency Work for R/W

Eligible R/W cost incurred by local agency. |
| Line f | — Other — R/W

Same as shown on Local Agency Agreement, usually consultant (etc.) cost paid by the local agency. |
| Total R/W | — The sum of lines e and f equals the total amount claimed and authorized for payment to the local agency.

Column (7) on this line shows the total amount of federal funds set up for the local agency based on the latest version of the Local Agency Agreement. |
| Line i | — Contract

Eligible payments made to contractor. |
| Lines j and k | — Other

Other costs incurred by the local agency as indicated on the Local Agency Agreement, such as Day Labor, Agency Supplied Materials, etc. |

Line 1 — Agency Work
Eligible cost incurred by the local agency.

Total Construction — Add the Total Contract Work . This is the total amount claimed and authorized for payment to the local agency.
Column (7) on this line shows the total amount of funds set up for the local agency based on the latest version of the Local Agency Agreement.

Total Project Cost — Add the Total PE, Total R/W, and Total Construction. This is the total amount claimed and authorized for payment to the local agency.
Column (8) on this line shows the total amount of federal funds for all phases of work for the local agency based on the latest version of the Local Agency Agreement.

Column (1) — Total Expenditures Eligible for Federal Participation This Period
Record the total eligible expenditures this period for each item of work.

Column (2) — Total Eligible to Date

Column (3) — Percent of Participation
The current participation ratio will be provided.

Column (4) — Amount Claimed This Period
Column (4) can never exceed column (1) times column (3), but may be less than. Multiply column (1) by column (3) and enter in column (4). This represents the amount of funds claimed on this progress bill.

Column (5) — Funds Paid Prior Period
This represents the total amount of funds previously claimed (column (6) on the previous billing). This amount will be provided on the form.

Column (6) — Total Claimed to Date
Add column (4) and column (5) and enter the total in this column. The total claimed to date for PE, R/W, and Construction **cannot** exceed the amount authorized shown in column (7). Refer to funding setup section.

Column (7) — Amount Authorized Per Agreement
This is the total amount of funds authorized for each line item per the latest version of the Local Agency Agreement. This amount will be provided on the form.

Column (8) — Remaining Funds
Subtract column (6) from column (7) and enter the difference in this column. The difference represents the remaining funds available. This column cannot be a negative value. If negative, a supplement to the Local Agency Agreement must be prepared to receive full payment.

Sign and date the progress billing and distribute according to the instructions located at the bottom of the form. **All hard copy and final bill requests for payment must have an original signature in order to be processed.** If you have any questions, please contact your Regional Highways and Local Programs Engineer.

24.1 General Discussion

Since this manual outlines the federal procedures that a local agency must follow for a Federal Highway Administration (FHWA) funded project, only compliance with the National Environmental Policy Act (NEPA) will be described in detail. If a local agency needs assistance in determining the environmental classification of a project, they are encouraged to contact the Regional Highways and Local Programs Engineer to arrange for a field review of the proposed project. Also, a local agency should be aware of the following State Environmental Policy Act (SEPA) requirements:

- All projects, regardless of the funding source, must comply with: SEPA of 1971 as supplemented in 1983, RCW 43.21C; “SEPA Rules,” WAC 197-11, and local ordinances; Section 9 of the Endangered Species Act of 1973 (ESA) and Section 4, Part (d) of the ESA; Section 106 of the National Historic Preservation Act of 1966 (NHPA).
- While Environmental Impact Statement (EIS) documentation that meets NEPA requirements usually satisfies SEPA requirements, SEPA documents do not necessarily satisfy NEPA requirements.
- A SEPA checklist may be required if right-of-way or state permits are required for a Class II, NEPA — Categorical Exclusion (CE) project.
- Since not all NEPA CEs are SEPA Categorical Exemptions, these projects may need environmental approval both as a NEPA CE and as a SEPA Determination of Non-Significance (DNS).
- No EIS is required when a NEPA Environmental Assessment (EA) supports a NEPA Finding of No Significant Impact (FONSI) or when a SEPA checklist supports a SEPA DNS.
- When the NEPA EA or EIS is developed in coordination with state and local agency requirements, the document and its appropriate review and processing may be adopted to satisfy SEPA requirements in accordance with WAC 197-11-610.
- The Adoption Notice, WAC 197-11-965, is filled out by the local agency and circulated to the Department of Ecology (DOE), to agencies with jurisdiction, and to persons or organizations who have responded to the proposal in writing.

When the project involves federal funds or federal permits, its environmental requirements are governed by:

- NEPA of 1969, 42-USC-4321 et seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Parts 1500, et seq.

- Federal Highway Administration — Federal Transit Administration, 23 CFR, Part 771.
- Environmental Impact and Related Procedures, 49 CFR, Part 622.
- Section 7 of the ESA, 50 CFR, Part 402 and Section 4, Part (d) of the ESA.
- Section 106 of the NHPA, 36 CFR, Part 800.

This manual and the Washington State Department of Transportation’s (WSDOT) *Environmental Procedures Manual* (M 31-11) should be used to conduct the environmental evaluation.

Environmental evaluation starts with project classification which is normally the initial step in project development. A project will fall into one of three defined classes, depending on the extent of its impacts. The three classes are defined in Section 24.2.

Federal regulations require the use of an interdisciplinary approach to assess a project’s social, economic, and environmental impacts. “Interdisciplinary” means integrated consideration of the project’s aspects through such disciplines as biology, economics, geology, sociology, urban planning, archeology, communications, and acoustics in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 24.3, .4, and .5. The Regional Highways and Local Programs Engineer can advise local agencies on how to set up an interdisciplinary approach.

For projects that may involve historic and/or archaeological lands, the local agency should contact the State Historic Preservation Office at (360) 407-0752.

It is permissible to complete activities, such as budgeting, prospectus development, legislative or feasibility studies, and value engineering studies prior to the environmental evaluation. At the discretion of the local agency, other activities, such as preliminary engineering for soil surveys and location studies, may be done in conjunction with or prior to the environmental evaluation.

Flow charts depicting the NEPA environmental processes for each class of project are included in Section 24.2. Definitions of terms used in these processes are given in the Glossary.

All EISs will be written in a format described in WSDOT’s *EIS Format Standards* (M 31-14). If these documents are presented to the public, the documents must have English units. Therefore, if a project is designed in metric, the environmental documents must show dual English/metric units.

24.2 Project Classification

All projects will be classified by the local agency as either Class I, II, or III as defined below. The classification should take place as early as possible in the project's development since the scope of the subsequent environmental evaluation and documentation processes depends on the project's class. Upon this determination, the local agency completes the environmental classification section of the project prospectus.

The following paragraphs define the three classes of projects and list types of work typically found in each class.

.21 Class I, NEPA — Environmental Impact Statement (EIS). Actions likely to have significant impact on the environment by virtue of their effects upon land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or by virtue of the fact that they are apt to create public controversy are Class I projects. An EIS can be prepared without developing an Environmental Assessment (EA). Refer to Sections 24.3 and 24.7.

Projects which usually require an EIS are:

- a. A new controlled-access freeway.
- b. A highway project of four or more lanes on a new location.
- c. New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated-guideway transit).
- d. New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

The local agency checks the "preliminary" box and completes the Local Agency "Environmental Classification Summary" (ECS) form utilizing known project information, as developed in the planning stage and/or the Growth Management Act requirements on all Class I projects. The ECS is submitted by the local agency with the Project Prospectus and the Local Agency Agreement to the Regional Highways and Local Programs Engineer for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

Class I projects under the NEPA/SEPA/Section 404 Interagency Working Agreement (for a copy, see the Environmental Affairs Office home page at <http://www.wsdot.wa.gov>) involve projects that impact Waters of the United States or Waters of the State require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the "final" box and completes the ECS for submittal to the Regional Highways and Local Programs Engineer for FHWA's final concurrence. The local agency distributes copies to

resource agencies for information and coordination purposes. See Appendix 24.101 for other environmental requirements pertaining to the Project Definition and Budget stage of project development.

After scoping is completed for Class I projects that are not included in the NEPA/SEPA/Section 404 Interagency Working Agreement, the local agency checks the "final" box and completes the ECS for submittal to the Regional Highways and Local Programs Engineer for FHWA's final concurrence. The ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

.22 Class II, NEPA — Categorical Exclusion (CE). Unless specifically requested by other agencies or the public, these actions do not require an EIS or an EA.

CEs are actions which meet the definition contained in 40 CFR 1508.4 and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic, or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Any action which normally would be classified as a CE but could involve unusual circumstances will require the FHWA and the Federal Transit Administration (FTA), in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- Significant environmental impacts;
- Substantial controversy on environmental grounds;
- Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- Inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Class II projects requiring documentation (Documented CE).

Projects in this category require the local agency to complete the ECS and conduct a biological assessment evaluation (Section 24.7) for submittal to the Regional Highways and Local Programs Engineer for FHWA's concurrence prior to beginning the PS&E.

Projects may require detailed environmental studies for CE documentation to determine the environmental, economic, and social impacts. After obligation of PE funds, the detailed analyses can take place and the local agency finalizes the ECS for final approval.

Examples of these situations are as follows:

1. The acquisition of more than minor amounts of temporary or permanent strips of right-of-way for construction of such items as clear vision corners and grading. Such acquisitions will not require any commercial or residential displacements.
2. The use of properties protected by Section 4(f) of the Department of Transportation Act (49 USC 303).
3. A determination of adverse effects by the State Historic Preservation Office.
4. Any U.S. Coast Guard construction permits or any U.S. Army Corps of Engineers Section 404 permits.
5. Any work in wetlands.
6. Any work encroaching on a regulatory flood-way or any work affecting the flood-plain (100-year flood) elevations of a water course or lake.
7. Construction in, across, or adjacent to a river designated as a component or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/ U.S. Department of Agricultural.
8. Any changes in access control.
9. The use of a temporary road, detour, or ramp closure unless the use of such facilities satisfy the following conditions:
 - Provisions are made for access by local traffic and so posted.
 - Through-traffic dependent business will not be adversely affected.
 - The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.
 - The temporary road, detour, or ramp closure does not substantially change the environmental consequences of the action.
 - There is no substantial controversy associated with the use of temporary road, detour, or ramp closure.
10. Any known hazardous materials sites or previous land uses with potential for hazardous materials sites or previous lands uses with potential for hazardous materials remains within the right-of-way.

11. Any projects that involve unusual circumstances not listed or public opposition.
12. Any project in a designated evolutionarily significant unit (ESU).

.23 Class III, NEPA — Environmental Assessment (EA).

For actions in which the significance of the impact on the environment is not clearly established, an EA is prepared to determine the extent of environmental impact and to determine whether an EIS is needed. No EIS is required when the EA supports a NEPA Finding of No Significant Impact (FONSI). Refer to Sections 24.5 and 24.7.

The local agency checks the “preliminary” box and completes the Local Agency “Environmental Classification Summary” (ECS) form utilizing known project information, as developed in the planning stage and/or the Growth Management Act requirements on all Class III projects. The ECS is submitted by the local agency with the Project Prospectus and the Local Agency Agreement to the Regional Highways and Local Programs Engineer for submittal to FHWA for preliminary concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

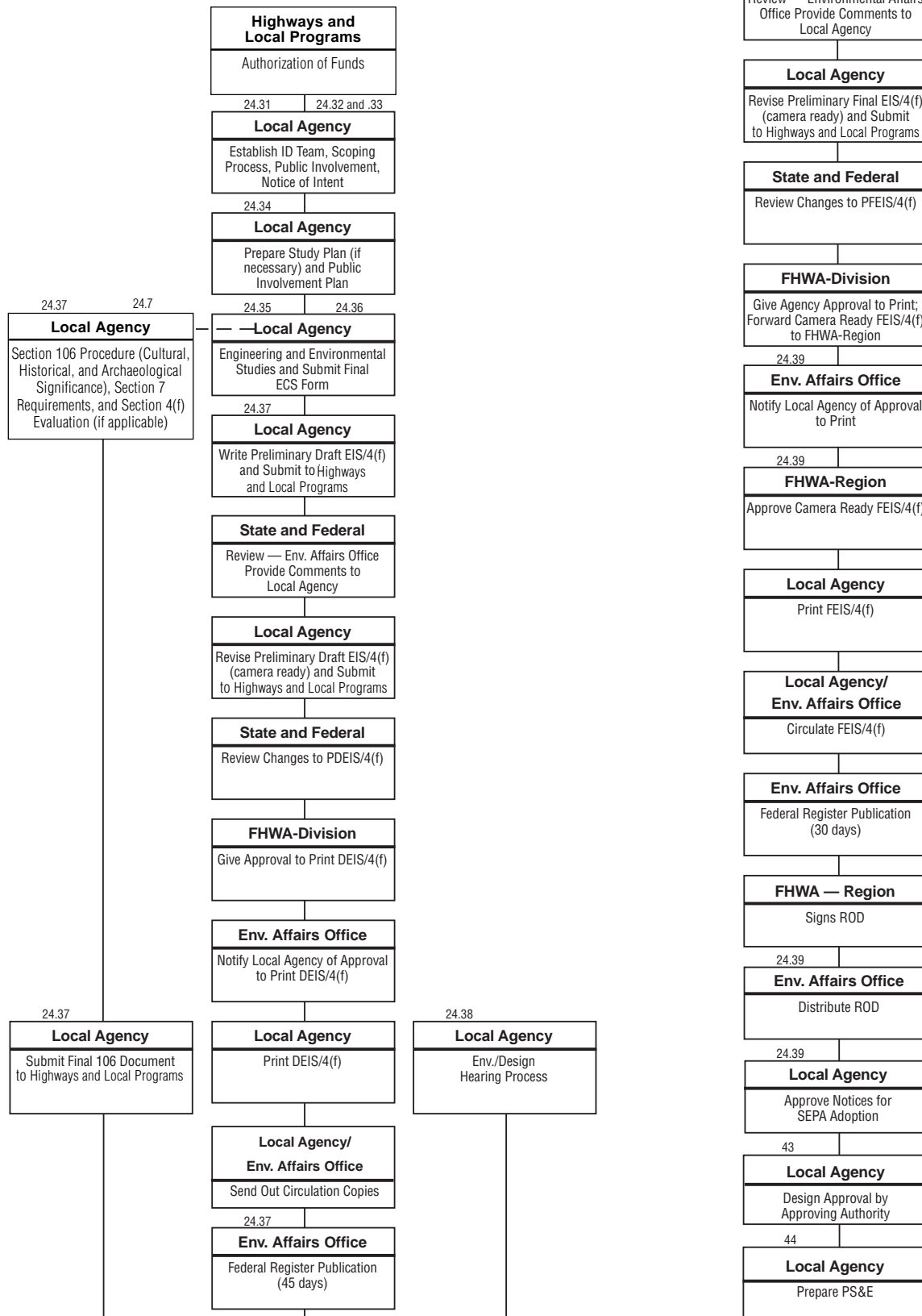
Class III projects under the NEPA/SEPA/Section 404 Interagency Working Agreement (for a copy, see the Environmental Affairs Office home page at <http://www.wsdot.wa.gov>) involve projects that impact Waters of the United States or Waters of the State require an individual permit from the U.S. Army Corps of Engineers (COE). Local agencies will perform the required environmental scoping as a priority after project funding is obligated. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the Regional Highways and Local Programs Engineer for FHWA’s final concurrence. The local agency distributes copies to resource agencies for information and coordination purposes.

Class III projects not included in the NEPA/SEPA/ Section 404 Interagency Working Agreement. After scoping is completed, the local agency checks the “final” box and completes the ECS for submittal to the Regional Highways and Local Programs Engineer for FHWA’s final concurrence. The final ECS should be submitted as early as possible and/or practical in the project development stage. The local agency distributes copies to resource agencies for information and coordination purposes.

.24 Progress Flow Charts for Class I, II, and III Projects.

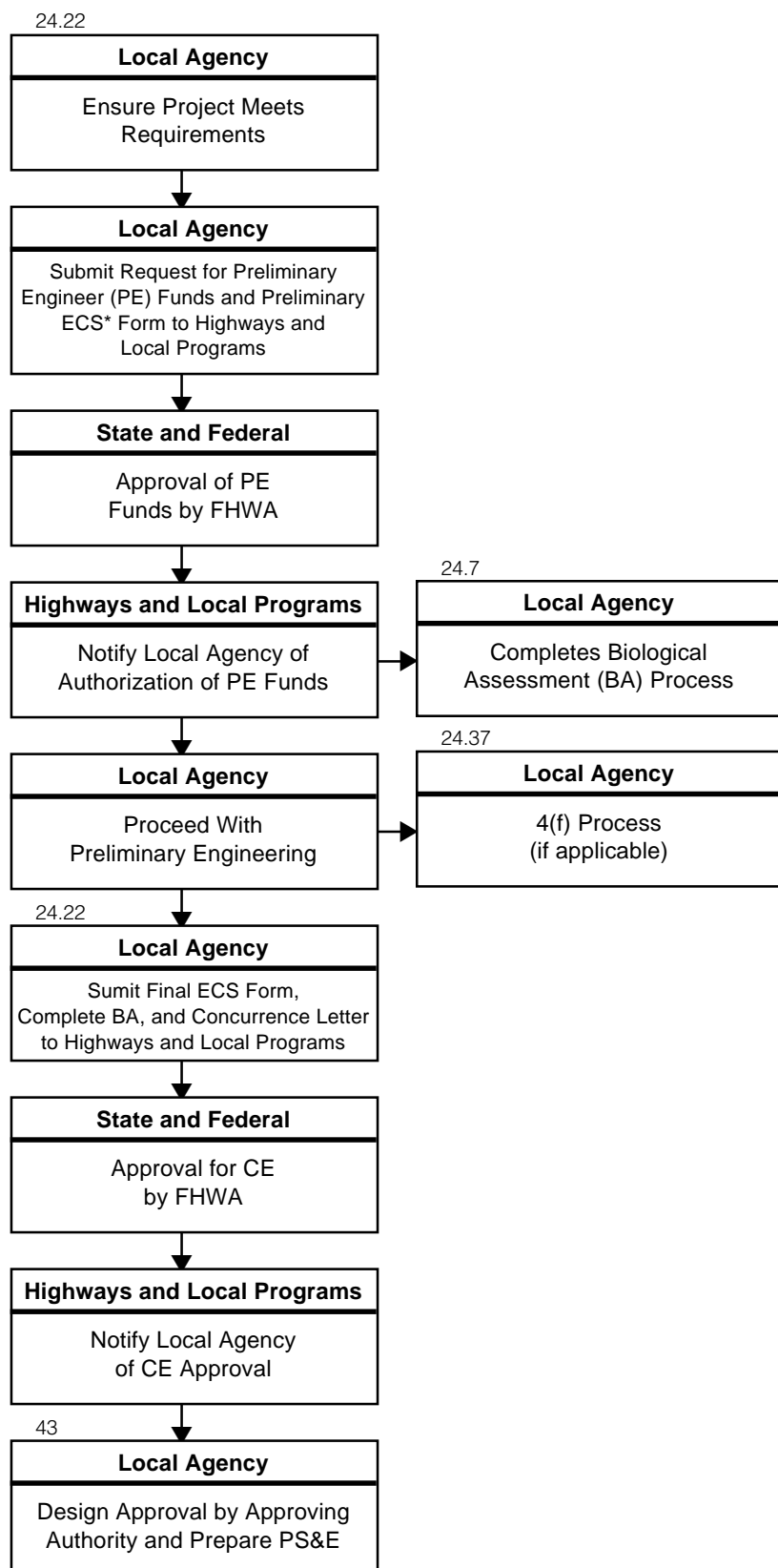
The following flow charts illustrate the progress through which Class I, Class II, and Class III projects should follow.

Class I Projects



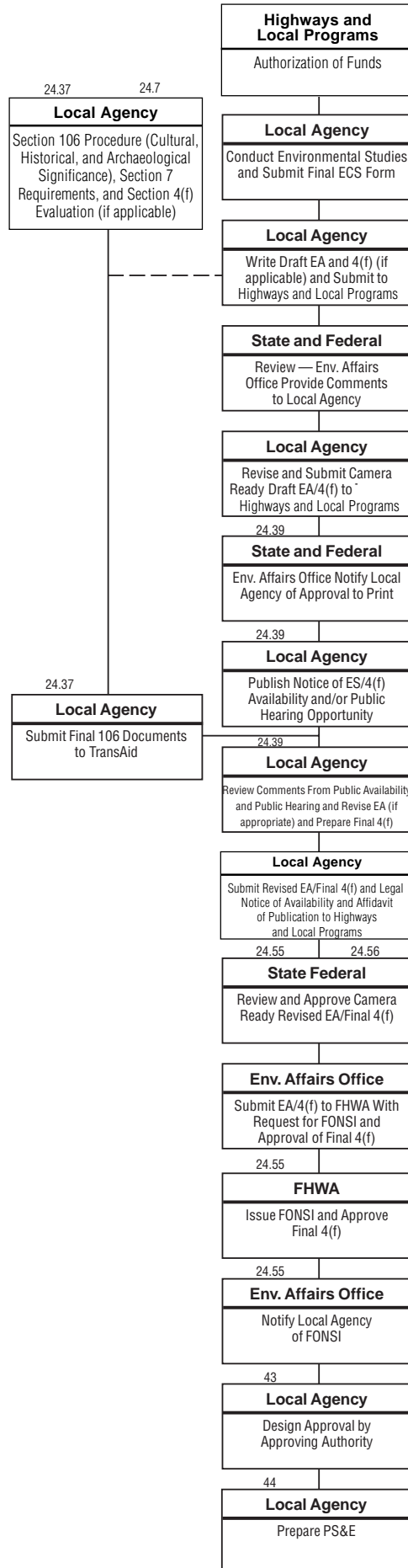
Class II Projects

Projects Requiring Documentation



*If project requires detailed environmental studies for CE documentation or preparation of an EA.

Class III Projects



24.3 Procedures for Class I Projects

The activities described in this section are summarized on the flow chart for Class I projects contained in Section 24.24.

.31 Notice of Intent. After FHWA authorization of preliminary engineering funds, the local agency prepares a Notice of Intent for publication in the Federal Register advising federal, state, and local agencies that an EIS will be prepared. The contents and guidelines for preparation of the notice are found in FHWA Notice N 6640.19 of March 24, 1980. The notice is submitted to the Environmental Affairs Office which submits it to FHWA for placement in the Federal Register.

.32 Project Manager (PM) and Interdisciplinary Team (IDT). The agency administrator delegates the project's administrative responsibilities to a Project Manager and provides support staff to assist in project administration.

The local agency appoints experts in various disciplines to an IDT which functions as an advisory board to the agency administrator. The IDT provides objective in-depth studies, analyses, reports, guidance, and recommendations concerning the proposed improvement as it relates to social, economic, and environmental issues.

The disciplines and personnel selected for the IDT depend on the nature and magnitude of the project. The local agency may request WSDOT to assign discipline representatives to the IDT. WSDOT personnel are assigned when available and may be supplemented by consultants, personnel from other state or local agencies, and the community. The IDT, community groups, and planning agencies may suggest inclusion of additional disciplines.

IDT members may have expertise in such areas as acoustics, air quality, archaeology, architecture, biology, botany, communications, economics, geology, hydrology, landscape-architecture, meteorology, sanitary engineering, sociology, structural engineering, transportation planning, urban planning, water quality, and other disciplines as appropriate.

Duties and responsibilities of the IDT include:

- a. Review and approval of a study plan and a public involvement plan.
- b. Evaluation of alternative courses of action.
- c. Preparation of reports (data and conclusions of technical studies; views of citizens, officials, and groups).
- d. Submission of recommendations to the PM.

The PM, in consultation with the various disciplines, prepares a proposal, identifies affected parties, and outlines environmental concerns and alternatives to be included in the scoping process.

.33 Scoping. Scoping is a process used to identify potential environmental concerns or controversy and alternatives for the EIS as early as possible. It includes a series of meetings, telephone conversations, or written comments involving various agencies, interest groups, and individuals.

The PM is responsible for development and coordination of the scoping process. Specific scoping objectives are:

- a. To identify the affected public and agency concerns.
- b. To define the issues and alternatives to be examined in detail in the EIS.
- c. To save time by attempting to ensure that draft EISs adequately address relevant issues, thus reducing the possibility that an EIS will have to be rewritten or supplemented.
- d. To facilitate an efficient EIS preparation process by assembling the cooperating agencies, ascertaining which permits and reviews need to be scheduled concurrently, and establishing completion times.

Prior to the scoping process, the local agency provides affected agencies, Indian tribes, interest groups, and the IDT with information about the proposal including a brief description, statement of goals, tentative alternatives, probable environmental impacts and issues, maps, drawings, and a brief explanation of the scoping procedure. The local agency also must submit a written request to initiate formal Section 106 consultation with the appropriate tribal governments. The PM documents proceedings and correspondence concerning the scoping process.

The scoping process continues through the development of the DEIS.

.34 Study Plan and Public Involvement Plan.

- a. The local agency should prepare a study plan. It should be completed immediately after the issues and alternatives have been identified in the initial stages of the scoping process. The study plan, which shows the environmental studies to be conducted, is prepared by the PM and approved by the IDT and the local agency. The study plan describes the level of effort intended for defining the interdisciplinary approach, public involvement, alternatives to be studied, and social, economic, and environmental issues.

The study plan should indicate the following:

1. Title sheet:
 - (a) Project title.
 - (b) Date.
 - (c) Approval date and signature of:
 - Team chairman.
 - Agency administrator.
2. Vicinity map.

3. Need and purpose:
 - (a) Need (known deficiencies).
 - (b) History (if applicable).
 - (c) Purpose of project.
 - (d) How proposed project will satisfy the need.
 4. Scope of work:
 - (a) Interdisciplinary approach (brief description of how the team uses interdisciplinary information to reach decisions).
 - (b) Alternatives.
 - (c) Public involvement summary (to date).
 - (d) Brief description of areas of primary importance and significant controversy.
 5. List of cooperating agencies.
 6. Studies to be prepared and areas of responsibility:
 - (a) List of studies to be prepared and disciplines involved.
 - (b) Identify IDT members, project manager, and IDT chairperson.
 - (c) Identify education and experience of all expertise in format required for EIS.
 7. Staffing and budget requirements.
 8. Project schedule.
 9. Date and location of scoping meetings.
 10. Appendix: Public involvement plan.
- b. The local agency must prepare a public involvement plan that outlines the procedures for presenting information to the public, obtaining comments, and ensuring consideration of public opinion.
- In preparing the public involvement plan, consider the following:
1. Methods to provide information and receive comments:
 - (a) Public meetings.
 - (b) Surveys of public opinions.
 - (c) Meetings with groups having special interests in transportation.
 - (d) Information centers or booths.
 - (e) Advisory committees.
 - (f) Meetings with public officials.
 - (g) News releases (all mass media).
 - (h) Newsletters.

- (i) Presentations and call-in questions on radio and television talk shows.
2. Time schedule to accomplish each task (different methods may be carried out simultaneously.)
3. Methods to be used in considering public comments during the decision-making process.
4. Personnel, time, and funds required to conduct the program.
5. The public involvement plan is a part of the scoping process.

.35 Selection of Alternatives. The alternatives to be studied are identified by the PM, the IDT, and through the scoping process. The IDT studies proposed alternatives and determines their likely social, economic, and environmental effects. Generally, each alternative is developed to the same level of detail so that comparisons of effects can be made. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives which may have been considered were eliminated from detailed study. Alternatives should be openly discussed with all affected groups.

A listing of features to be considered for each alternative, along with a comparative matrix to assess differences, is shown in the EIS Outline found in WSDOT's *Environmental Procedures Manual*.

Alternatives normally include the following:

- a. The no-action alternative which could include short-term minor reconstruction activities (safety improvements, etc.) that are part of an ongoing plan for continuing operation of the existing roadway.
- b. Improvement of the existing facility, which could include resurfacing, restoration, rehabilitation, and reconstruction types of activities.
- c. Construction of new transportation facilities on new routes and locations.
- d. Multimodal alternatives, including public transit, rail, or other modes dictated by the characteristics of the study area. These may be under the jurisdiction of other lead agencies and require early coordination.
- e. Possible combinations of b, c, and d above.

.36 Data Collection, Inventory, and Evaluation. The IDT develops an inventory of social, economic, environmental, and engineering data. The information is used to define the environment; to predict and analyze project impacts; to help select the preferred alternative; to prepare environmental documents; and to inform other agencies, interest groups, or individuals. Sources of data include, but are not limited to, field studies, consultation, and coordination with other agencies and the public. WSDOT's *Environmental Procedures Manual* and FHWA Technical Advisory

T6640.8A are general guides to the types of information, depth of study, and procedures to be used in collection, inventory, and evaluation of required environmental data. The following is a list of areas considered in the development of an environmental document.

Biological/Physical:

- Air Quality
- Noise
- Energy
- Geology and Soils
- Waterways and Hydrological Systems
 - Water Body Modification
 - Wild and Scenic Rivers
 - Coastal Zone Impacts
 - Coastal Barriers
- Flood Plains
- Water Quality
- Wetlands
- Wildlife, Fisheries, and Vegetation

Social/Economic:

- Farmland
- Land Use
- Social Elements
 - Community Cohesion
 - Environmental Justice — The goal is that minority and low income individuals should not suffer a disproportionate share of negative environmental impacts resulting from federal, state, local and tribal programs and policies. It also mandates consultation with all potentially affected groups in the development of projects with environmental impacts.
 - Recreation — When applicable include a 6(f) discussion. Section 6(f) of the Land and Water Conservation Fund Act of 1965 states: No property acquired or developed with assistance under this section shall, without the approval of the Secretary (of the Interior), be converted to other than public recreation uses. The Secretary shall approve such conversions only if it is found to be in accord with the then existing comprehensive state outdoor recreation plan and only upon such conditions as is deemed necessary to assure the substitution of the recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. (see the *Environmental Procedures Manual* (M 31-11) Volume 2, Chapter 3-7, for additional information)
 - Regional and Community Growth
 - Services
 - Pedestrian and Bicyclist Facilities
- Economic Elements
 - Employment
 - Tax Revenues
 - Property Values

- Relocation
- Historic and Archaeological Elements
- Hazardous Waste
- Visual Quality
- Construction Activity Impacts
- Irreversible and Irretrievable Commitment of Resources
- Relationship of Short-Term Uses of Environment and Long-Term Productivity
- Secondary and Cumulative Impacts

.37 Reports and Recommendations.

- a. Discipline Reports. After data has been collected, inventories compiled, and analyses completed, each discipline representative prepares a segment of the report. The reports document the technical studies and investigations performed, provide a summary of findings, and list recommendations. If there are any individual reports, they should be submitted to the project manager for review.

Since the reports must communicate equally to technical and nontechnical groups, a summary is written to present the significant findings and recommendations in nontechnical terms. The information is presented in a form suitable for incorporation into the EIS, for presentation at public hearings, or for use by management and lay groups in decision-making. The summary must contain an introduction, conclusions, and recommendations.

The technical portion of the discipline report provides evidence that all the major areas of potential impact have been considered. It presents information to support the findings of significance and effect, and demonstrates clearly that the study is in compliance with the requirements of environmental law. The discipline report normally contains:

- Summary of report findings, conclusions, and recommendations.
- Background discussion.
- Study methodology.
- Coordination with other groups or agencies.
- Affected environment (existing conditions).
- Prediction of impacts of each alternative.
- Impact mitigation measures.
- Biological Assessment (Section 24.7).
- Section 106 Documentation (Section 24.8).
- Construction information.
- Maintenance and operation information.
- Bibliography.

- b. Preliminary Recommendations. The PM reviews all discipline reports and documents preliminary recommendations after discussing the various trade-offs with the IDT.
- c. Draft Environmental Impact Statement (DEIS) and Commitment File. The DEIS is the initial local agency project report. It identifies the alternative actions and presents an analysis of their impacts on the environment. Usually the DEIS does not identify a recommended course of action. The DEIS summarizes the early coordination process, including scoping, and identifies the key issues and pertinent information received through these efforts.

All EIS documentation must comply with the requirements of NEPA and the Council on Environmental Quality (CEQ) guidelines.

On projects where federal agencies have funding or permitting responsibility, one federal agency is the lead agency. The local agency, WSDOT, and the federal lead agency are mutually responsible for the EIS. Any other federal agency may be involved as a cooperating agency. Projects jointly developed with a federal agency should comply with that agency's regulations and guidelines.

The local agency prepares a preliminary DEIS using data supplied by the IDT and other sources.

The local agency also prepares a commitment file consisting of proposed mitigating measures, commitments made to other agencies, and any other commitment made on behalf of the project. The local agency is responsible for maintaining the commitment file during the environmental review process.

Upon completion of the preliminary DEIS, the local agency submits the document to the Regional Highways and Local Programs Engineer for review and comment by the Olympia Service Center and FHWA.

Review comments are returned to the local agency for revision of the preliminary DEIS as appropriate. After making changes in response to comments on the preliminary DEIS, the local agency submits the DEIS to the Regional Highways and Local Programs Engineer for processing (signature) of the title sheet by the WSDOT Director, Environmental Services. FHWA and the Environmental Affairs Office returns the signed title page and approval to print the DEIS. Required copies of the document are then submitted to the Regional Highways and Local Programs Engineer for circulation.

The DEIS is submitted to the WSDOT Environmental Affairs Office for transmittal to the EPA for processing so that a notice may be published in the Federal Register. A comment period of not less than 45 days begins upon publication in the Federal Register.

The DEIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the EPA.

Circulation of the DEIS is a responsibility shared between the local agency and the WSDOT Environmental Affairs Office. The local agency circulates the DEIS to any agency, organization, public official, or person who expresses interest in or requests it. The agency also provides it to any governmental agency authorized to develop and enforce environmental standards, and any governmental agency authorized to issue permits. The Regional Highways and Local Programs Engineer will coordinate with the WSDOT Environmental Affairs Office and FHWA to ensure that circulation of the DEIS is accomplished in accordance with federal and state requirements. Generally, all copies of the DEIS are furnished free of charge. After initial circulation, a printing fee may be charged as long as it does not exceed the cost of printing.

- d. Draft Section 4(f) Evaluation. Section 4(f) of the Department of Transportation Act states that the FHWA will not approve the use of land from a significant publicly owned, park recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:
 - There is no feasible and prudent alternative to the use of land from the property; and
 - The proposed action includes all possible planning to minimize harm to the property resulting from such use.

A section 4(f) evaluation must be included in a separate section of the environmental document (see the *Environmental Procedures Manual* (M31-11) Volume 3, Chapter 5-3 for additional information).

A separate evaluation is prepared for each location within the project where the use of Section 4(f) property is being considered. The Section 4(f) evaluation must include:

1. Description and need for the proposed action.
2. Description of the Section 4(f) properties.
3. Impacts on the resource by each alternative.
4. Alternatives that avoid Section 4(f) properties and their impacts.
5. Measures to minimize harm.
6. Coordination with appropriate agencies.

The DEIS and Draft Section 4(f) Evaluation Report must be circulated to the Secretary of the U.S. Department of the Interior for a 45-day review and comment period. When appropriate, the Secretary of Housing and Urban Development and the Secretary

of Agriculture (federal) are also given an opportunity to review the proposal. When a Section 4(f) property is identified after the DEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized. See Section 24.39(c) below.

- e. Section 106 Preliminary Case Report. Section 106 of the National Historic Preservation Act of 1966 requires that the agency determine whether there are any National Registers listed or eligible properties that could be affected by the proposed project.

See Section 24.8 for process guidelines.

Section 4(f) requirements apply when the Section 106 property in question is on or eligible for the National Register of Historic Places. When a Section 4(f) Evaluation is required, the Section 106 Preliminary Case Report and Draft Section 4(f) Evaluation will be one document to satisfy the requirements of both laws.

For further information, see the WSDOT *Environmental Procedures Manual* mentioned in Section 24.35.

.38 Hearings and Notices. When the local agency advertises for an environmental, design, or combined environmental/design hearing, or offers a notice of opportunity for public hearing, the notice will comply with requirements of 23 CFR, Part 771.111(h) and announces the availability of the environmental document and where it may be obtained and/or reviewed. Where hearings are not required by statute, an informational meeting may serve as a useful forum for public involvement in the environmental process.

a. References:

1. Council on Environmental Quality (CEQ) Regulations, 40 CFR, Part 1506.6.
2. USDOT Order 5610.1C.
3. 23 CFR, Part 771.
4. WAC Orders 197-11-510 and 535.

b. NEPA Requirements:

1. Public hearings are required for NEPA projects when:
 - (a) Substantial environmental or public controversy exists;
 - (b) The local agency has a substantial interest in holding a hearing; or
 - (c) An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
2. The Notice of Availability of the DEIS will include the name of the federal lead agency. If there is involvement in floodplains, wetlands, Section 4(f) lands, or endangered species, this information is included in the notice. These

notices are printed in the Federal Register by the lead agency. The notice must be published at least 15 days in advance of the public hearing.

Examples of notification methods are publishing a notice in a newspaper of general circulation in the general geographic area of the proposal; notifying private groups that are known to be interested in a certain proposal; contacting news media; and placing notices in appropriate regional, neighborhood, or ethnic periodicals. The notice should be published at least 30 days in advance of the public hearing. During this period, the DEIS is open to consideration and comment.

The DEIS notice of availability describes the following elements:

- location of project
- brief description of work
- purpose of statement
- responsible agency
- where documents are available
- where to send comments

.39 Final Reports and Approvals.

- a. Final Recommendation. The local agency reviews comments from the hearings and those received from evaluation of the DEIS, and prepares a hearing summary that it submits to the Regional Highways and Local Programs Engineer for review.

The local agency then analyzes and coordinates comments on the DEIS with the IDT and prepares a final recommendation. The final recommendation contains a description of the preferred alternative, identifies any significant adverse impacts, the proposed measures to minimize harm, and any monitoring or enforcement programs required to ensure implementation of mitigation measures. The local agency submits this recommendation with appropriate comments to the Regional Highways and Local Programs Engineer for review.

- b. Final Environmental Impact Statement (FEIS). The local agency prepares the FEIS, coordinates preparation and processing procedures with the Regional Highways and Local Programs Engineer, and submits the FEIS to the Regional Highways and Local Programs Engineer. The FEIS contains the local agency's final recommendation for the preferred alternative, evaluates all reasonable alternatives considered, discusses substantive comments received on the DEIS, summarizes citizen involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS also documents compliance with environmental laws and executive orders.

Three optional approaches to preparing an FEIS are possible:

1. The Traditional Approach incorporates the DEIS essentially in its entirety, with changes made as appropriate throughout the document to reflect the selection of the preferred alternative, modifications to the project, updated information, changes in the assessment of impacts, selection of mitigation measures, wetland and floodplain findings, the results of coordination, comments on the DEIS, and the responses to those comments.
2. The Condensed Final EIS avoids repetition of material by incorporating the DEIS by reference. It should present a complete overview of the project and its impacts on the environment. Its focus is on changes in the project, its setting, impacts, technical analysis, and mitigation since circulation of the DEIS. As above, it must include identification of the preferred alternative, coordination efforts, appropriate findings, comments, and their responses.
3. The Abbreviated Version of the FEIS can be used where the only changes needed in the document are minor and consist of factual corrections or an explanation of why comments on the DEIS do not warrant further response. This FEIS would consist of errata sheets making corrections, a section identifying the preferred alternative, any appropriate findings, a list of commitments for mitigation measures for the preferred alternative, and copies or summaries of the comments received and their responses.

For further information about the choice of FEIS approaches, consult the *Environmental Procedures Manual*, M 31-11, and FHWA Technical Advisory T 6640.8A.

The WSDOT Environmental Affairs Office will coordinate circulation of the preliminary FEIS for review. Review comments are provided to the local agency for use in revising the FEIS. The WSDOT Environmental Affairs Office reviews the FEIS. The Director, Environmental Services, signs the title page and then obtains approval from the federal lead agency.

The WSDOT Environmental Affairs Office forwards the signed title page to the local agency for insertion into the FEIS. The local agency prints the FEIS and submits it to the Regional Highways and Local Programs Engineer.

Responsibility for circulation, distribution, and coordination of the FEIS is shared between the local agency and the Environmental Affairs Office. The local agency notifies the public of the FEIS availability

in the same manner as for the DEIS (see Section 24.38(b)2, above), except that no comments are solicited. The local agency circulates the FEIS for public review to any person, organization, or agency that submitted substantive comments, any agency authorized to issue permits, and public institutions. The Highways and Local Programs Engineer will coordinate with the WSDOT Project Development Office and FHWA to ensure that circulation of the FEIS is accomplished in accordance with federal and state requirements.

When the use of a Section 4(f) property is identified after the FEIS has been processed, a separate Section 4(f) Evaluation is prepared, circulated for comment, and finalized.

- c. Final Section 4(f) Evaluation. When the selected alternative involves the use of Section 4(f) property, a Section 4(f) Evaluation is included as a separate section in the FEIS. The final 4(f) Evaluation contains:
 1. All information required for a draft Evaluation found in Section 24.37d.
 2. A discussion supporting a conclusion that there are no feasible and prudent alternatives to the use of the Section 4(f) property. The discussion must demonstrate that there are unique problems or unusual factors involved in the use of any alternatives that avoid these properties, or that the costs of these alternatives in terms of finances, social, economic, environmental impacts, or community disruption resulting from such alternatives would be extraordinary.
 3. A discussion documenting that the proposed action includes all possible measures to minimize harm to the Section 4(f) property.
 4. A summary of the formal coordination with the Department of the Interior and, as appropriate, the U.S. Departments of Agriculture and Housing and Urban Development.
 5. A copy of the Memorandum of Agreement with FHWA when historical or archaeological lands are involved.
 6. Copies of all formal comments received and responses to questions.
 7. Concluding statement, "Based upon the above considerations, it is determined that there is no feasible and prudent alternative to the use of land from the Section 4(f) property and that the proposed action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use."

- d. Record of Decision (ROD). This document is prepared by the local agency in draft form. The local agency submits the draft ROD with the preliminary final EIS. The ROD accompanies the FEIS through the review and approval process. The ROD includes the information required by Section 1505.2 of the CEQ Regulations.

The following format is used:

1. Decision. Identify the selected alternative. Reference to the FEIS may be used to avoid repetition.
2. Alternatives considered. Briefly describe each alternative (with reference to the FEIS, as above) and explain the balancing of values underlying the decision. Economic, environmental, safety, traffic service, community planning, and other factors have different values and may be given different levels of importance. Identify the reasons why some values were considered to be more important than others. Describe the manner in which these values were considered in arriving at the decision. Identify the environmentally-preferred alternative or alternatives. Where the selected alternative is other than the environmentally preferable alternative, the ROD should clearly state the reasons for not selecting the environmentally preferable alternative. In addition, if Section 4(f) property is used, summarize the Section 4(f) Approval.
3. Measures to minimize harm. Describe all measures to minimize environmental harm that have been adopted for the proposed action. State whether all practicable measures to minimize environmental harm have been incorporated into the decision and, if not, why.
4. Monitoring or enforcement program. Describe any monitoring or enforcement program that has been adopted for the specific mitigation measures, as outlined in the FEIS.
5. Commitment list. Include an item-by-item list of commitments and mitigation measures from the commitment file. The list serves as a ready reference for the design, construction, and maintenance of the project.

24.4 Procedures for Class II Projects

The activities described in this section are summarized on the flow chart for Class II projects.

- Projects Requiring Documentation (Documented CE)

If any CE project affects Section 4(f) properties, the project is a "Projects Requiring Documentation." A separate Section 4(f) Evaluation is required as outlined in Section

24.37 d. Supporting documentation must also be prepared for CE projects that may effect wetlands, farmlands, flood plains, or cultural resource properties.

The Environmental Classification Summary (ECS) (DOT Form 140-100 EF) Part 5, requires the local agency to conduct a Biological Assessment (BA) evaluation of the proposed project's impacts on any listed or proposed Endangered Species Act (ESA) species or critical habitat within the project area. This evaluation is called a BA and must be completed on all federal aid projects prior to requesting federal aid funding authorization for right-of-way or construction phase. See Section 24.7 for the details of the BA process.

24.5 Procedures for Class III Projects

The activities described in this section are summarized on the flow chart for Class III projects contained in Section 24.23.

- .51 Appointment of Disciplines and Project Manager.** After authorization of preliminary engineering funds, the local agency appoints experts in various disciplines to conduct all studies necessary for EA preparation and appoints a PM to be responsible for development of the project. These projects do not require a formal IDT but must use an interdisciplinary approach for the needed investigations.
- .52 Coordination.** The local agency coordinates with affected federal, state, and local agencies, Indian tribes, interest groups, and the public in determining the scope of the action, alternatives to be considered, and the issues to be addressed. The PM is responsible for the coordination. During the early coordination process, FHWA, in cooperation with Highways and Local Programs and the local agency, requests that other involved agencies become cooperating agencies. By law, federal agencies having jurisdiction or special expertise must become cooperating agencies when requested. FHWA normally initiates contact with other federal agencies. FHWA may direct the local agency to contact state or other local agencies. The local agency makes these requests in writing and sends a copy to the Regional Highways and Local Programs Engineer.
- .53 Data Collection, Inventory, and Evaluation.** The various discipline representatives conduct studies to assess the project's social, economic, and environmental impacts. The depth of a study varies with the magnitude of the proposal. Generally, discipline studies for an EA are developed using the same method outlined in Section 24.21 for EIS projects. Studies are carried out to the point where the extent of environmental impact can be determined. If significant impacts are found during the EA, an EIS is required.
- .54 Public Involvement.** The local agency conducts public meetings, mails notices, and uses other methods appropriate to the magnitude of the project to provide and obtain information. Public involvement methods are discussed in Section 24.38.

.55 Reports and Recommendations.

- a. Discipline Reports. Refer to Sections 24.37 and 24.7.
- b. Environmental Assessment. The local agency prepares a preliminary Environmental Assessment (EA) in accordance with the EA outline in WSDOT's *Environmental Procedures Manual*. Include an area map, vicinity map, site plan, photogrammetric maps (to depict the environmental setting), discipline reports, and any letters demonstrating coordination of environmental concerns, such as endangered species listings, prime and unique farmland determinations, archaeological/historic reports, etc. If the project involves the use of Section 4(f) properties, a separate 4(f) Evaluation is required and is included as a separate section in the EA. The local agency prepares a BA evaluation (Section 24.7) to be included as a separate section in the EA.

The preliminary EA and draft Section 4(f) Evaluation are submitted to the Regional Highways and Local Programs Engineer. (Contact the Regional Highways and Local Programs Engineer for number of copies to be submitted.) The WSDOT Environmental Affairs Office will coordinate their circulation.

If reviewers determine that the proposal may have significant environmental impacts, an EIS is required.

If no significant impacts are found, the WSDOT Environmental Affairs Office returns the preliminary EA, with comments, to the local agency for revisions.

The local agency submits the revised EA, with the original cover sheet signed by the local official, to the Regional Highways and Local Programs Engineer. WSDOT approves the EA by signing the cover sheet and forwarding it to the federal lead agency for approval. Once signed by the federal official, the original cover sheet is returned to the local agency for reproduction and binding with the EA.

A notice announcing the availability of the EA is published by the local agency in a newspaper of general circulation. The local agency then coordinates with WSDOT the circulation of the approved EA to affected individuals, interested parties, and local, state, and federal agencies with jurisdiction.

If Section 4(f) property is involved, the document is also circulated to the Department of the Interior. If historic or archaeological lands are involved, the document is also circulated to the State Historic Preservation Officer (SHPO).

When the period for public availability of the EA has ended, the local agency evaluates all comments received, including comments from public hearings (if held), meetings, and open houses. The local agency responds to the comments and revises the document

as necessary. If comments are minor, the local agency may issue an addendum referencing changes to the EA.

The final EA, Notice of Availability, and Affidavit of Publication are submitted to the Regional Highways and Local Programs Engineer with a request for a Finding of No Significant Impact (FONSI). After FHWA issues the FONSI, the WSDOT Environmental Affairs Office returns the signed FONSI to the local agency.

.56 Hearing and Notices. Class III projects require a hearing if: (1) there is substantial controversy; (2) the local agency wants a hearing; or (3) an agency with jurisdiction requests one. For additional information, refer to Section 24.38.

Class III projects normally have less potential for environmental impacts and public controversy than Class I projects, and consequently are less apt to require public hearings. Prepare the EA in advance of any public hearing. The public hearing notice follows the format and time schedule outlined in Section 24.38. The notice of public hearing published in local newspapers should announce that the EA is available and where it can be obtained or reviewed.

Even when a hearing is not required, the local agency will publish a notice in the local newspaper (similar to a public hearing notice) advising the public that the EA is available for review and comment and noting where the document may be obtained. The public review and comment period for an EA is 30 days. If a Section 4(f) Evaluation is included, a 45-day public review and comment period is required.

The local agency notifies the Planning and Community Affairs Agency (Statewide Clearinghouse) via letter that an EA and FONSI are available from the agency or the federal lead agency.

24.6 Project Reevaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall reevaluate an environmental document.

A **written** reevaluation is required when any of the following conditions exist:

1. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation.
2. Major steps to advance the project (such as approval to acquire a substantial portion of the right-of-way, or approval of PS&E) have not occurred within three years of FEIS approval or supplemental FEIS approval.

The local agency reevaluates the project by conducting appropriate environmental studies or, if necessary, by preparing an EA. The reevaluation is submitted in written form to the Regional Highways and Local Programs Engineer.

If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in significant impact that were not evaluated in the original EIS, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations, refer to 23 CFR 771 and WSDOT's *Environmental Procedures Manual*.

24.7 Biological Assessments

The Endangered Species Act (ESA) does not allow for **grandfathering**. Any federal action is subject to Section 7 of the ESA, whether or not it is already approved and/or underway. On all federal aid projects under construction the local agency, must evaluate the BA's done for the project, update them if needed, and submit them to Regional Highways and Local Programs office to forward to FHWA, with a copy to NMFS and/or USFWS.

FHWA must fulfill its responsibilities under the ESA, including coordination with NMFS prior to approval of NEPA. In turn NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right-of-way purchase or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the BA required under the ESA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with NMFS.

For the interim and on a project by project basis, local agencies can request an exception to some of the requirements listed above. FHWA will consider requests to sign NEPA documents, prior to the completion of the biological assessment consultation process, to allow for right-of-way acquisition. FHWA will not authorize construction funding for these projects, however, until the Section 7 consultation requirements have been met. In order to utilize the exception, the project must be able to meet the following requirements:

- The NEPA document (final EIS, FONSI, CE) must:
 - Demonstrate a reasonable project effort to achieve full compliance with the ESA prior to final EIS, FONSI, or CE approval. At a minimum, this would include informal consultation and the submittal of a Biological Evaluation or Assessment to NMFS or USFWS with detail appropriate to address the ESA issues.
 - Identify and describe the meetings held in an attempt to resolve the issues.

- Outline the concerns/position of NMFS or USFWS and the areas of agreement and disagreement with supportive documentation, such as agency letters and meeting minutes.
- The NEPA document (final EIS, FONSI, CE) must:
 - Describe the project features and mitigation measures which have been incorporated into the project to avoid, minimize, and/or compensate for project biological impacts.
 - Describe that NMFS or USFWS suggested features and measures, and hopefully, show that the differences between what has been incorporated into the project and what is being requested are not dissimilar.
 - Outline the reasons why full compliance cannot be achieved prior to final EIS, FONSI, or CE approval.
 - Outline a process of further agency coordination that will reasonably result in ESA compliance.

FHWA will only approve final EIS, ROD, FONSI, or CEs where the above requirements have been met and the consequences of delay outweigh the risks. The risks to FHWA will be defined as:

- Any substantial changes to the project as a result of changes in mitigation requirements, may require a supplemental NEPA document to address the changes.
- Right-of-way may be purchased but cannot be used.
- Even if changes required to meet Section 7 do not trigger supplemental documents or change ROW needs, they could increase the cost of the project substantially.

FHWA will consider requests to sign NEPA documents for those projects that meet the conditions above. In order to utilize this exception, the local agency must submit to the Regional Local Programs office all documentation detailing compliance with the above listed requirements and a written request, signed by the agency's Approving Authority, requesting agreement from FHWA to utilize this exception for the agency's project. After Highways and Local Programs Service Center determines that the project meets all requirements, they will send it to FHWA for concurrence of the request to allow for right-of-way acquisition prior to completion of Section 7 consultation. Upon FHWA concurrence with the local agency's request, FHWA will advise Highways and Local Programs Service Center, who will initiate authorization of federal funding for right-of-way acquisition.

Due to the requirements of agencies to meet their responsibilities under the ESA, the following are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by the Highways and Local Programs Service Center. Appendix 24.108 provides some definitions of the environmental references.

.71 Species Listings. The agency must request ESA species listings to assist in assessing a project's environmental impacts from the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Washington State Department of Natural Resources (DNR), and the Washington State Department of Fish and Wildlife (WSDFW). (Appendix 24.103) These requests are for the agency's entire jurisdiction and will be applied to all of the agency's federal aid projects. These requests must be updated every six months. (Appendix 24.104) Federal and state resource agencies generally have 30 days to respond to a species listing request. The species listings for the NMFS must be obtained from the Regional Highways and Local Programs office.

For species which are proposed for listing, but not yet listed, any federal action must be evaluated to determine whether it jeopardizes the continued existence of the species. For projects which will not be completed before the proposed listing could take affect, the species should be treated as if it were listed with a conditional effect determination.

Until the project is completed, the agency must request updated species listings from NMFS (through the Regional Highways and Local Roadways office), USFWS, DNR, and WSDFW, every six months. If any species listings or locations have changed, the BA shall be updated appropriately. Verification of the requests will be included as part of the agency's project management review.

.72 Project Evaluation. Section 7 of the ESA requires that any federal aid project must be evaluated to determine its effects on listed or proposed species and/or critical habitat. The species information and completion of the ECS Part 5 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impact to any listed species or critical habitat.

If the evaluation determines the need to consult with a biologist, the biologist will:

- Conduct a field review.
- Assess the impacts on all listed species and habitat.
- Make an "effect" determination for each listed species.
- Write the biological assessment.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.73) will be one of three conclusions:

- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect

The agency will report on the impacts of the project through either:

- a. "No Effects" letter BA. Typical items to include in the letter are:
 - Species listings;
 - A signed ECS;
 - Brief discussion of the project, its impacts, and justification for the "no effect" determination.
- b. Complete BA report. Typical items to include in the report are:
 - A brief description and location of the project;
 - Construction information including when the work will be completed;
 - Description of listed species or habitat within the project area;
 - Evaluation of the potential "effects" on listed species or critical habitat;
 - Assertion of "effect" determinations for each listed species;
 - Development and recommendations of conservation and mitigation measures;
 - Bibliography.

The decision to do a BA depends on the level of potential impacts to streams or surface waters which are within the geographical range of the listed species or population. A BA report should be done when projects cross streams (bridges, culverts), require any construction activity within the active channel (retaining walls, riprap, channel relocations), cause the discharge of additional stormwater or other drainage directly to streams through surface channels without soil or other filtration, significantly increase the volume of surface runoff to salmon streams, result in the removal or alteration of riparian vegetation areas adjacent to streams with listed populations, or when listed species or critical habitat are present.

.73 Effect Determinations. If a federal aid project is in an area where there are species designated as Threatened or Endangered, the ESA requires that FHWA make a determination of the effect of the project on the listed species or critical habitat. FHWA must make this determination of affect in consultation with NMFS (for marine species) or USFWS (for all terrestrial and freshwater species). Part 5 of the ECS includes a checklist which will assist the agency in the determination of effect.

- a. No effect. This conclusion is appropriate if the project has no impact on any listed species or critical habitat and the ECS Part 5 yields a no effect.

For some projects, the local agency may be able to make a no effect determination without a BA report. In this case, a "No Effects" letter BA (Appendix 24.105) stating the basis for the effect determination will be sufficient. The agency would address the type of work

the project entails and why these actions would not impact the species in the area. Or if there are no species or critical habitat in the area, the letter would explain the items the agency marked “yes” on Part 5 of the ECS. This explanation would include a justification of those items and identify the agency procedures to ensure a no effect determination.

If a biologist evaluates the project and concludes the project has “no effect” on any of the listed species or critical habitat, the agency’s “no effect” letter BA will include a brief discussion of the project, its impacts and justification for this determination.

To meet the obligations under the ESA, the Highways and Local Programs Service Center and FHWA must review the no effect determination for adequacy and concur with the determination. The local agency will forward a copy of the completed BA and ECS to the Regional Highways and Local Programs office. The Regional Highways and Local Programs office will forward it to the Highways and Local Programs Service Center for concurrence. Upon the Highways and Local Programs Service Center’s concurrence, a copy of the signed ECS, and the no effects letter BA, and/or the biological assessment is submitted to FHWA, with a copy to NMFS and/or USFWS. This can be done concurrently with the request for federal funding approval.

A response from NMFS and/or USFWS on these projects is not anticipated. NMFS and USFWS have stated they would not issue concurrence letters on projects with no effect determinations. After Highways and Local Programs Service Center reviews the no effect determination and sends it to FHWA (with a copy to NMFS and/or USFWS), the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right-of-way or construction phase of a project.

- b. May Affect, Not Likely to Adversely Affect. This conclusion is appropriate when the project has some effect on the listed species, but that effect is totally beneficial, insignificant, or discountable. BA reports are normally done on “May Affect, Not Likely to Adversely Affect” projects to document the reasons for the not likely to adversely affect conclusion.

If an incidental take is determined to be likely, then a “not likely to adversely affect” conclusion is not appropriate.

To meet the obligations under the ESA, the Highways and Local Programs Service Center and FHWA must review the may effect determination for adequacy and concurrence of the determination. The local agency will forward a copy of the BA report and ECS to the Region Highways and Local Programs office. The Regional Highways and Local Programs office will

send it to the Highways and Local Programs Service Center for concurrence. Upon the Highways and Local Programs Service Center’s concurrence, the signed ECS and a copy of the BA report supporting this conclusion will be forwarded to FHWA, NMFS and/or USFWS, for an informal consultation (written response required).

1. NMFS and/or USFWS must concur in writing with the not likely to adversely affect conclusion prior to FHWA authorizing right-of-way and/or construction funds for a project. The written concurrence for the project is sent to the Highways and Local Programs Service Center and completes the informal consultation process required by Section 7 of the ESA. The Highways and Local Programs Service Center sends the concurrence letters, from NMFS and USFWS, to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize funding for the right-of-way or construction phase of the project. (For an exception see 2.)
2. Local agencies can request an exception to the requirements listed above, if a project is time critical and meets certain conditions as outlined in what is referred to as the Section 7(d) letter. This exception must have FHWA concurrence, and be coordinated with NMFS and/or USFWS, prior to FHWA authorizing an agency to purchase right-of-way or go to construction.

Section 7(d) of the ESA prohibits a federal agency which has initiated consultation with NMFS or USFWS on any action from making any “*irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measure.*” The 7(d) letter documents specific projects that could be built without irreversibly or irretrievably committing resources. For these projects, identified on the list sent to NMFS, NEPA may be concluded prior to completion of consultation (written concurrence). Consultation on these projects must be completed and the agency **must “commit”** to construct any mitigation measures that are agreed to during the consultation process.

For projects utilizing the 7(d) provisions of the ESA requires the local agency to commit funding for construction of any mitigation measures that are agreed to during the consultation process. Depending on the timing of the completion of consultation this may be accomplished by a change order to the construction contract or by a new contract.

In order to add a project to the existing 7(d) list of approved projects, the local agency must submit to the Regional Highways and Local Programs office the completed BA and a request letter (Appendix 24.107) signed by the agency's Approving Authority. The letter must include: a request to addendum to the 7(d) project list; outline the time critical aspects of the project; **"commit"** to meet any and all mitigation requirements determined by NMFS and/or USFWS (to be outlined in the concurrence letters); and state the agency will be in continuous consultation with the Highways and Local Programs Service Center and FHWA until such time as NMFS and/or USFWS concurrence.

After Highways and Local Programs Service Center's determine that the project meets 7(d) requirements, they will send it to FHWA for concurrence with the request to addendum the current 7(d) project list. This submittal to FHWA will include the signed ECS and a copy of the BA, and the local agency request letter. Upon FHWA concurrence with the effect determination, FHWA will advise NMFS of the added project, and can authorize federal funding for right-of-way and/or construction phase of the project.

- c. May Affect, Likely to Adversely Affect. This conclusion is appropriate when the project has an affect on the species which is not totally beneficial, is not insignificant (i.e., is measurable), and is not discountable (i.e., is likely to occur). The "May affect, likely to adversely affect" conclusion is supported by a BA which documents the likelihood of a take or measurable impacts on critical habitat within the potential geographical range of the species of concern.

The local agency prepares a BA and sends it to the Region Highways and Local Programs office. The Regional office sends it to the Highways and Local Programs Service Center which submits the BA to FHWA with a letter requesting Formal Consultation. Upon FHWA concurrence with the effect determination, the BA report and request for formal consultation is submitted to NMFS and/or USFWS. The formal consultation takes place with NMFS and/or USFWS, Highways and Local Programs, the local agency, and FHWA.

The ESA gives NMFS 90 days to accomplish this consultation. Extensions of 60 days are often requested. NMFS must respond within 30 days of submission of the BA to the effect determination to initiate formal consultation. If formal consultation is initiated, FHWA cannot approve environmental documentation or federal aid right-of-way and/or construction funding until it is concluded.

After the consultation NMFS prepares a Biological Opinion (BO) within 45 days, documenting the results of the consultation and concluding the Formal Consultation Process. This may result in the issuance of an Incidental take statement or no-jeopardy call by NMFS. Upon agreement by FHWA, Region Highways and Local Programs, and the local agency to incorporate any and all terms and conditions outlined in the biological opinion into the project, the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right-of-way and/or construction phase of the project. Normally the total period required for NMFS to issue a biological opinion including agreed upon extensions will not exceed 195 days. (90 + 60 + 45 = 195 days)

NMFS may recommend or suggest in writing reasonable and prudent measures to remove or eliminate adverse effects of the project to listed species. If the local agency, Highways and Local Programs, and FHWA agree in writing to implement such measures as NMFS recommends, this removes the "likely to adversely affect" conclusion, and the consultation process is completed. FHWA then approves the environmental documentation and federal aid funding for the project.

If the local agency and Highways and Local Programs **do not** agree to such reasonable and prudent modifications to the project, FHWA cannot approve environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

1. Formal Consultation. If NMFS and/or USFWS concurs with a BA finding of "likely to adversely affect," or does not concur with a BA finding of "not likely to adversely affect" or "no effect," they will request initiation of formal consultation procedures in writing to FHWA and explain the basis for the request.

Formal consultation is for projects with more substantial impacts. Local agencies, Highways and Local Programs, and FHWA are required to provide the best scientific and commercial data available or which can be obtained, during the consultation for an adequate review of the effects the action may have on the listed species.

NMFS will review the BA and other pertinent information regarding the project and impacts to the species of concern to determine if it involves a take of the species and also to determine if the project would jeopardize the continued existence of the listed species (or subspecies, population, evolutionarily significant unit (ESU)). Including agreed upon extensions, formal consultation will

be concluded within **195 days** of initiation by the issuance in writing from NMFS of a biological opinion.

- (a) Extensions to Formal Consultation. NMFS may request an extension of the consultation period by mutual agreement among NMFS, the local agency, Highways and Local Programs, and FHWA. Without mutual agreement on the length of the extension, it shall not exceed 60 days past the original consultation period. NMFS may request extension of time and additional data from the local agency, Highways and Local Programs, and FHWA to form a biological opinion. The local agency, Highways and Local Programs, and FHWA will obtain, to the extent practicable, data that can be developed within the scope of the extension. Requests for extensions and additional data notwithstanding, NMFS will issue a written biological opinion at the end of the consultation period using the best scientific and commercial data available.
- (b) Incidental Take Permits. For projects where the local agency's BA and/or NMFS and/or USFWS conclude that incidental taking of listed species will occur and not violate Section 9(a), NMFS and/or USFWS will provide a statement concerning incidental take of individuals or habitat that: 1) specifies the amount or extent of the impact or taking, 2) specifies the reasonable and prudent measures needed to minimize the impact or take, 3) sets forth terms and conditions that must be met by the local agency, Highways and Local Programs, and FHWA to implement the measure specified above, 4) specifies procedures to dispose of taken individuals of the listed species.

If at any time the conditions and measures specified in the incidental take statement are exceeded or violated, the FHWA must reinitiate consultation immediately.

2. Biological Opinion. A BO from NMFS may conclude a finding of jeopardy/no jeopardy; or adverse modification of habitat/no adverse modification of habitat.
 - (a) No Jeopardy/No adverse modification of habitat opinion. A no jeopardy/no adverse modification of habitat opinion indicates the NMFS concludes that the project as proposed will not jeopardize the continued existence of species through direct take or through take/modification of critical habitat. This con-

cludes the consultation process and FHWA can approve environmental documentation and participation with federal aid right-of-way and/or construction funds.

- (b) Jeopardy/adverse modification of habitat opinion. A Jeopardy/adverse modification opinion indicates NMFS has concluded that the construction of the project as proposed jeopardizes the continued existence of the listed species through direct effects on individuals or modification of critical habitat. NMFS may make recommendations for reasonable and prudent measures to remove or lessen the impacts. Agreement by the local agency, Highways and Local Programs, and FHWA to implement these measures changes the jeopardy opinion to a no-jeopardy opinion. This concludes the consultation process and FHWA will approve environmental documentation and authorize participation of federal aid funds.

If NMFS does not respond either within 135 days with a BO or within 90 days with a request for extension or additional data, FHWA can approve environmental documentation for the project and participation with federal aid funds.

.74 ESA Stormwater Effects Guidance. This section provides interim guidance for a project which:

- Increase Impervious Service, or
- Clear, Grade, or Fill (Erosion Control), or
- Have Spill Potential

This guidance only covers specific project activities. It does not cover all of the possible project elements which must be analyzed by the project biologist before a final effect determination, based upon all of the projects activities, is made. Effect determinations must be project specific and this guidance may not fit in every case. There may be instances where the project conditions and site specific circumstances are such that the project does not meet the conditions outlined under one of the effect determinations (e.g. no effect), but the final analysis reaches that conclusion. However, the project specific conditions and rationales can be thoroughly documented in the BA.

For changes to this guidance refer to the *Highway Runoff Manual*. Until additional changes are made, use the *Highway Runoff Manual* or other local ordinances (if they are more stringent) to design the stormwater treatment system.

Understand this guidance assists with the effect determination with respect to stormwater considerations. The overall effect determination for a species and/or critical habitat may or may not be different upon consideration of other factors.

Each project is evaluated for its location, for the effects due to stormwater, clearing, grading and filling, and the effects of all project elements on the baseline indicators before making a final project effect determination. Projects located within a Water Resource Inventory Area with no habitat or potential habitat for listed fish species will have no effect on listed fish species and require no further evaluation.

The following questions need to be answered and included in the BA report to assist in the effect determination due to stormwater issues for the project.

- How much **new impervious surface** is the project creating?
- How much of the **new impervious surface** is being treated for stormwater? (Express as a percentage of the total or provide an amount.)
- What best management practices (BMP) are being used to treat the **new impervious surface** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP? (This includes overflow channels.)
- What is the amount of **existing (pre-project) impervious surface** in the project area?
- What BMPs are being used to treat the **existing impervious surface** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP?
- How much of the untreated **existing impervious surface** is proposed to be treated as part of this project?
- What BMPs are proposed for the treatment of **untreated existing impervious** for:
 - a. quality?
 - b. quantity (is infiltration being utilized)?
 - c. what is the receiving area of water body for each BMP?
- If the project is not infiltrating all of the runoff from the new impervious, and is unable to treat a minimum of 140% of the new impervious surface for quality and quantity, explain why:

The effect determination with respect to stormwater considerations may or may not be different than the overall effect determination for a species and/or critical habitat, upon consideration of other factors. The following provides guidance to determining the stormwater effect determination.

a. No Effect

1. Stormwater from new impervious surfaces has no effect when:
 - (a) *New impervious*: Infiltrate with pretreatment for all new impervious. **OR**
 - (b) Stormwater treatment for project is designed to = 140% x the Area of New Impervious surface. (This is based on the assumption that post-project net pollutant loading should not exceed the pre-project loading.) In other words the new impervious surface should not result in any additional pollution to the receiving waters. Since our stormwater best management practices (BMP) are not 100% efficient, some amount of preexisting impervious surface will have to be treated to attain a no-net increase in pollutant loading. The treatment level has been established at 140% of new impervious surface to make up for the fact that the BMPs are not 100% efficient.

Example: A project adds 10 acres of new impervious surface area, which will be 100% treated. How much impervious surface will the project have to treat to attain a “no effects” determination?

Answer: $140\% \times (10 \text{ acres}) = 14.0 \text{ acres}$ which is the 10 new acres plus 4 acres of the existing untreated surface area..

2. Clearing, Grading and Filling has no effect when:

The project is within ESU/Distinct Population Segment (DPS is a USFWS designation for bull trout listings.), clears, grades, and grubs over 300' from any waterbody, provided:

- (a) Temporary Erosion Sedimentation Control (TESC)/ Stormwater Site Plan (SSP) is fully implemented (including spill control)
- (b) “Environmental baseline” is not degraded, including spawning areas (determined by the Biological Evaluation (BE is an evaluation done by a project biologist to determine the effects of the project on listed species. The BE may lead to a biological assessment if necessary.), large woody debris, riparian habitat, etc.

b. May Affect, Not Likely to Adversely Affect

1. Stormwater from new impervious surfaces may affect but is not likely to adversely affect listed fish species and their habitat when:
 - Impervious: Treatment with detention for all new impervious and treats less than 0.40 (new impervious area) of existing impervious within the project limits. (NMFS is concerned that the detention ponds and other BMPs may not be sized large enough due to the fact that the *Highway*

Runoff Manual is based on outdated rainfall data. Section 2-5 of that manual includes a chart which addresses the current safety margin at a later date. In addition, a study is underway to update the rainfall chart.

2. Clearing, Grading and Filling may affect but is not likely to adversely affect listed fish when:
 - The project within ESU/DPS, clears, grades, and grubs within 300 feet of any waterbody (which supports or drains into a listed fish supporting waterbody) but does not include “in water” work, provided:
 - (a) TESC/ SSP is fully implemented (including spill control)
 - (b) “Environmental baseline” is not degraded, including spawning areas (determined by BA), large woody debris, riparian habitat, etc.
 - (c) All other factors evaluated for the project by the project biologist result in a “no effect” or “may affect not likely to adversely affect” determination. This must include an analysis of direct and indirect effects of the action. (A direct and indirect effect analysis must be included which covers the action area. The action area is defined as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. Thus, if it is a bridge replacement, address the upstream and downstream impacts, bank impacts, construction easement impacts, the road approach impacts, temporary bridge impacts, impacts caused by the detour route, etc.)

Not all projects will be able to meet the above. Some may fall into the “may affect, likely to adversely affect” call.

3. Projects which work within water, may affect but are not likely to adversely affect listed fish if all three of the following conditions are met:
 - Work must be conducted within fish window (Gold & Fish list or as per HPA);
 - Work must occur in a non-spawning or rearing area (as determined by project biologist in conjunction with Washington State Department of Fish and Wildlife Habitat Biologist or Tribal Biologist or other Fisheries Biologist). (The rearing areas include pools, edies, structures, etc., but do not include glides.)
 - The project doesn’t degrade the environmental baseline

c. May Affect, Likely to Adversely Affect

1. Stormwater from new impervious surfaces may affect and is likely to adversely affect when:
 - Less than full treatment for all new impervious surfaces when project is within a subbasin that provides habitat or potential habitat for a listed fish species.
2. Projects which work within water, but do not meet the “not likely to adversely affect” category for instream work will result in an “adversely affect” to listed fish.
3. Clearing, Grading, and Filling may affect and is likely to adversely affect listed fish when:
 - Project is within ESU/DPS and does not fully implement TESC/SSP (including spill control) and is within a subbasin that provides potential habitat for listed fish species.

d. Beneficial Effect

Projects will have a beneficial effect when the stormwater treatment is:

- Treatment + detention for an existing impervious area that is a greater than 40% (new impervious area) within the project limits.

24.8 Section 106 Process

Any project, activity, or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency, including those carried out on behalf of a federal agency; and those actions requiring a federal permit, license, or approval, are considered to be an undertaking and are, thus, subject to the requirements detailed in Section 106 of the National Historic Preservation Act of 1966.

FHWA must fulfill its responsibilities under Section 106 of the NHPA, prior to the approval of NEPA. In turn, NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right of way acquisition or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the consultation requirements under the NHPA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), and, if necessary, the Advisory Council on Historic Preservation (ACHP).

Due to the requirements of agencies to meet their responsibilities under the NHPA, the following sections are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by the Highways and Local Programs Service Center.

.81 Identification of Historic Properties. The agency must coordinate with the SHPO/THPO to:

- determine the area of potential effects (APE).
- review existing information on historic properties within the APE.
- seek information, as appropriate, from tribal organizations, Native Hawaiian organizations, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties within the APE.

The local agency must submit a letter containing the following information to the Regional Local Programs Office:

- Description of the project.
- Location of the project, including legal description.
- Age of any structures present, if applicable (i.e., bridges, buildings, etc.).
- Maps and photos.
- A list of Tribes that should be included as potential consulting parties (see Appendix 24.109 for assistance).

The Regional Local Programs Office will transmit the letter to the Highways and Local Programs Service Center. Upon receipt of the documentation and review, the Highways and Local Programs Service Center will transmit the letter to the SHPO/THPO, requesting comments or information such as in identifying historic properties within the area of potential effects. The Highways and Local Programs Service Center will also transmit a copy of the letter to FHWA, in order to initiate consultation with the appropriate Tribal governments. The local agency should include sufficient copies of the documentation, so as to provide two (2) copies each to each identified Tribal government, as well as a copy for FHWA's files. Upon receipt of documentation and review, FHWA will send a formal letter to the identified tribe(s), as well as any other tribe (s) FHWA determines to be appropriate, to initiate the Section 106 consultation, normally within fifteen (15) days of receipt of request. If a response from a tribe is not received within thirty (30) days after the delivery date of the initiation of consultation letter, project development will be allowed to move forward. The tribes do have the option, however, of entering consultation at a later date.

The local agency and the Regional Local Programs Office will assume the lead in conducting Section 106 consultation with the tribal governments, after FHWA has initiated the consultation process with the written request. FHWA

will be available, however, to participate in Section 106 consultation with a tribe to the extent necessary, to ensure the tribe's meaningful participation in the process.

In addition to these requests, a local agency may also be required to search through the physical records located at the Office of Archaeology and Historic Preservation (OAHP) for identification of eligible historic properties and archaeological sites, if the project does not fall into one of the categories listed in Section 24.82 (a).

.82 Project Evaluation. Section 106 of the NHPA requires that any federal aid project must be evaluated to determine its effects on historic properties. The information from Section 24.81 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impacts to historic properties.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.83) will be one of the following conclusions:

- No historic properties affected.
- Finding of no adverse effect.
- Adverse effect.

The agency will detail the impacts of the project through either:

- a. "No historic properties affected" report. Typical items to include in the report are:
 - Description of undertaking.
 - Description of APE, including photographs, maps, drawings, as necessary.
 - Description of steps taken to identify historic properties.
 - Justification for determination of no historic properties present or affected.

The following list identifies those undertakings that have limited areas of impact which are unlikely to contain properties listed or eligible for inclusion in the National Register of Historic Places. These projects can be considered to have no effect on historic properties. If your project falls under one of the below categories, the local agency is not required to consult with SHPO or with the tribes on the APE and the impacts of the undertaking, as outlined in Section 28.81. Although consultation with the tribes will not be initiated, a monthly general notice will be sent to the tribes informing them of which projects met the programmatic exemptions.

- A. All work to be done on bridges of the National Highway System (NHS) and non-NHS state highways which are less than 40 years old, unless an inventory has shown the bridge to be exceptionally significant.

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| <p>B. All work within interchanges and within medians of divided highways unless the median has been undisturbed by construction.</p> <p>C. All work between a highway and an adjacent frontage road, unless the area between is undisturbed.</p> <p>D. Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and which <i>do not</i> extend beyond previous construction limits.</p> <p>E. Roadway surface replacement, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion of wearing surface, unless within a historic district.</p> <p>F. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago, except if the project is immediately adjacent to, or located within, eligible bridges, historic properties, or historic districts.</p> <p>G. Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators (except on National Register listed or previously determined eligible bridges, properties, or districts).</p> <p>H. Fencing, including salvage yards, provided no grading or other landscaping is involved.</p> <p>I. Landscaping on fillslopes and backslopes only. All landscaping beyond toe of fillslopes or beyond top of backslope must be reviewed.</p> <p>J. Repair or replacement in kind of curb and gutter, sidewalk and catch basins on the same location except the following: Replacement projects and construction of handicapped access ramps projects adjacent to National Register eligible or listed properties.</p> <p>K. Railway crossing signs and signal installation or modification and surface improvement.</p> <p>L. Emergency structural repairs to maintain the structural integrity of a bridge (except National Register listed or eligible bridges), roadway overlays, and painting. Bridge reconstruction which does not include roadway widening or modification of existing piers and abutments, but which may include bridge repairs, deck replacement or repair, railing repair and other maintenance work.</p> <p>M. Construction of turning lanes and pockets, auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening</p> | <p>where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities.</p> <p>N. Placement of fill material on the side slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.</p> <p>O. Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities, which constitutes a public hazard and which requires immediate removal.</p> <p>P. Placement of riprap within an area previously disturbed by vertical and horizontal construction activities, to prevent erosion of waterways and bridge piers.</p> <p>Q. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and stormwater treatment in previously disturbed areas.</p> <p>If the local agency determines that their project is included in one of the types of exempted activities listed above, the local agency must document this determination in Part 4, Question 3 of the Environmental Classification Summary.</p> <p>b. <u>“No adverse effect” and “Adverse effect” reports.</u>
Typical items to include in the report are:</p> <ul style="list-style-type: none"> • Description of undertaking. • Description of APE, including photographs, maps, drawings, as necessary. • Description of steps taken to identify historic properties. • Description of the affected historic properties. • Description of the undertaking’s effects on historic properties. • Justification for why the criteria of adverse effect were found applicable or inapplicable; including any conditions or future actions to avoid, minimize, or mitigate adverse effects. • Copies or summaries of any views expressed by consulting parties or public comment. <p>Projects which involve the excavation of previously undisturbed areas or require the acquisition of new right of way have the potential to uncover archaeological or historical resources. Under these conditions, an archaeological survey must be considered. For information on archaeological surveys, contact the Regional Local Programs Engineer.</p> |
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.83 Effect Determinations. If a federal aid project is in an area where historic properties are present, the NHPA requires that FHWA make a determination of effect of the project on those properties. FHWA must make this determination of effect in consultation with SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the identified properties.

- a. No historic properties affected. This is the appropriate conclusion if the project has no impact on any historic properties or if there are no historic properties present.

If the local agency determines that the undertaking fits within one of the categories listed in Section 24.82 (a), the local agency must document this in the Environmental Classification Summary's Section 4, Part 3.

If the undertaking does not fall under one of the categories listed in Section 24.82 (a), but the local agency determines that either no historic properties are present or there are historic properties present but the undertaking will have no effect upon the properties, the local agency shall provide documentation of this finding, including the information outlined in Section 24.82 (a), to the Regional Local Programs office. The Regional Local Programs office will forward the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO. The local agency shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

The documentation for the no historic properties affected determination, may be included with the documentation sent to SHPO/THPO for the identification of the APE.

If the SHPO/THPO does not object to the agency's findings within 30 working days of receipt of an adequately documented finding, the local agency has fulfilled their responsibilities under Section 106.

Once concurrence has been obtained from SHPO/THPO or the 30 day period has lapsed, the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right of way or construction phase of a project.

- b. No adverse affects. This conclusion is appropriate when historic properties are present and an undertaking may affect historic properties, but the impacts of the project do not fulfill the criteria for an adverse effect (as outlined in Section 24.83 (c)).

The local agency, after consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria for an adverse effect, or the undertaking is modified or conditions are imposed by the SHPO/THPO to prevent an adverse effect on historic properties. If the local agency proposes a finding of no adverse effect, the local agency must notify the Regional Local Programs office and all other consulting parties by providing them with the documentation specified in Section 24.82 (b). The Regional Local Programs office will forward the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center transmits the documentation to SHPO/THPO for review. The SHPO/THPO shall have 30 days from receipt to review the finding.

The local agency may proceed forward with the undertaking if the SHPO/THPO agrees with the no adverse effect finding or if the 30 days lapse without a response. Failure of the SHPO/THPO to respond within 30 days of receipt of the finding shall be considered agreement of the SHPO/THPO with the finding. With SHPO/THPO concurrence, the local agency must maintain a record of the finding and provide information on the finding to the public on request. Implementation of the undertaking in accordance with the finding as documented, fulfills the local agency's responsibilities under Section 106 of the NHPA.

Disagreement with the finding. If the SHPO/THPO or any consulting party disagrees with the local agency's finding, within the 30 day review period, it shall specify the reasons for disagreeing with the finding. The local agency shall either consult with the party to resolve the disagreement or may request the ACHP, through FHWA, to review the finding.

If a finding is submitted to the ACHP, the local agency must provide all documentation as detailed in Section 24.82 (b). The ACHP shall review the finding and notify the local agency of its determination within 15 days of receiving the documented finding from the local agency. The ACHP shall specify the basis for its determination. The local agency must proceed in accordance with the ACHP's determination. If the ACHP does not respond within 15 days of receipt of the finding, the local agency may assume concurrence with their findings and proceed accordingly.

The local agency should seek the concurrence of any Indian tribe and Native Hawaiian organization that has made known to the local agency that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribes or Native Hawaiian organizations disagree with the

finding, it may, within the 30 day review period, specify the reasons for disagreeing with the finding and request the ACHP review the finding.

Upon completion of the concurrence process or the lapse of the 30 day review period, the Highways and Local Programs Service Center sends the concurrence letter to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorizes funding for the right of way or construction phase of the project.

- c. Adverse effects. This conclusion is appropriate when the project has an effect on the historic properties present. An adverse effect is appropriate when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Adverse effects on historic properties include, but are not limited to:

- physical destruction of or damage to all or part of the property.
- alteration of a property, including restoration, rehabilitation, repair, maintenance, etc., that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines.
- removal of the property from its historic location.
- change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.

If an adverse effect is determined, the local agency must document its findings as outlined in Section 24.82 (b). The local agency, Highways and Local Programs and FHWA, must consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

The local agency will transmit their findings to the Regional Local Programs Office. The Regional Local Programs Office will transmit the documentation to the Highways and Local Programs Service Center, which will transmit the documentation to FHWA.

FHWA will notify the ACHP of the adverse affect finding by providing the documentation specified in Section 24.82 (b). The notice shall invite the ACHP to participate when the FHWA desires Council participation; the undertaking has an adverse effect upon a National Historic Landmark; or a programmatic agreement under Section 800.14 (b) of 36 CFR Part 800 will be prepared. The ACHP shall advise FHWA and all other consulting parties whether it will participate within 15 days of receipt of notice.

The local agency will provide the Regional Local Programs office and all consulting parties, the documentation detailing its finding, and will also make this information available for public comment. The Regional Local Programs office will send the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO for review. The local agency, Highways and Local Programs, and FHWA must consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects. If the local agency, Highways and Local Programs, FHWA, and the SHPO/THPO agree on how the adverse effects will be resolved, all parties will execute a Memorandum of Agreement (MOA). The FHWA will submit a copy of the executed MOA to the ACHP, prior to approving the project, in order to fulfill the requirements of Section 106.

Upon execution of the MOA, the consultation process is completed and FHWA can approve the environmental documentation and authorize participation of federal funds.

If agreement between the local agency, Highways and Local Programs, FHWA, and SHPO/THPO, as well as other consulting parties, cannot be reached, FHWA cannot approve the environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

24.9 Project Reviews

.91 References.

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).

.92 Definition. Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

.93 Procedures.

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through design, right-of-way acquisition, PS&E, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Regional Highways and Local Programs Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

.94 Commitment File. As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements.

The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental documents.
- b. Design reports.
- c. Right-of-way plans.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.
- j. Maintenance.

To organize and track commitments made during the development and implementation of a project, a "Record of Commitment," DOT Form 220-021, or similar form may be used.

When a commitment is made, record it on the Record of Commitment form. The form contains the detail necessary to document the commitment, including references to correspondence, agreement numbers, etc.

A commitment may be revised when all parties involved agree to the revision.

Records (forms) on completed commitments should be retained for at least a year after the completion date. Commitments requiring ongoing maintenance need to be retained in the files as long as the commitment is active.

24.10 Appendixes

[24.101 Instructions for Completing the Environmental Classification Summary](#)

[24.102 Biological Assessment Coordination Process](#)

[24.103 ESA Species Listings Requests — Agency Contacts](#)

[24.104 ESA Species Listings Request Letter Template](#)

[24.105 "No Effects" BA Letter Template](#)

[24.106 "May Affects" BA Template](#)

[24.107 7\(d\) Request Letter Template](#)

[24.108 Definitions](#)

[24.109 27 Tribes and Treaty Ceded Areas of Washington State](#)

[24.110 Local Agency Environmental Classification Summary](#)

[24.111 Local Agency Environmental Classification Summary — Supplement Sheet](#)

[24.112 Local Agency Environmental Classification Summary — Instructions](#)

The Environmental Classification Summary (ECS) form consists of five parts that are required to be completed.
(See LAG Chapter 24.2.)

Part 1 — Project Description

Date Form Revised	Date of latest significant revision to ECS form.
Revision Number	The latest revision number of the approved ECS form. This number applies only to this form and the continuation sheets.
Federal Aid Project Number	See LAG, Appendix 21.43.
Local Agency Project Number	Required and limited to eight (8) alpha/numeric characters.
Federal Program Title	See LAG, Appendix 21.43.
Within Puget Sound Basin	Answer yes if the project is located in any of the following twelve (12) counties: Clallam, Island, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Kitsap, Snohomish, Thurston, or Whatcom.
Water Resource Inventory Area (WRIA) Number and Name	The name and numbers of these areas along with a map are located in WAC 173-500-040.

Part 2 — Permits and Approvals Required

Includes permits and approvals required by a project. Answer yes or no based upon if the particular permit is required or not.

Corps of Engineers Permit	<ol style="list-style-type: none">1. Indicate if a Section 404, Section 10 permit or both are required.2. Indicate if an individual or nationwide permit is required.<ol style="list-style-type: none">a. If individual, enter permit number if known.b. If nationwide, enter the proposed nationwide permit type number. The name and numbers of these nationwide permits are located in Corps. Special Public Notice dated 2/11/92.
(NPDES) Baseline General for Construction	Indicate if Stormwater Site Plan or Temporary Sediment Control Plan (TESC) is required.

Part 3 — Environmental Classification

Includes the classification of the environmental document the proposed action may require. Projects are environmentally classified in both the NEPA and SEPA columns. Indicate by checking the appropriate box for the environmental documentation that will be prepared for the project.

NEPA and SEPA Categorical Exclusion and Exemption Levels	Specify the appropriate subsection the NEPA CE falls under.
---	---

Part 4 — Environmental Considerations

Address all fourteen (14) items. In some cases, it may be necessary to indicate “not applicable” (N/A) to some of the items. If the resource is present but no impacts are anticipated, explain in the remarks section.

Part 5 — Biological Assessment Evaluation

Using the species listings, complete the checklist. See LAG Section 24.7.

Approving Signatures

Local Agency Approving Authority

The Local Agency Approving Authority must sign page 5.

**Regional Highways and Local
Programs Engineer/Assistant Secretary
for Highways and Local Programs**

The Regional Highways and Local Programs Engineer or the Assistant Secretary for Highways and Local Programs signs page 5.

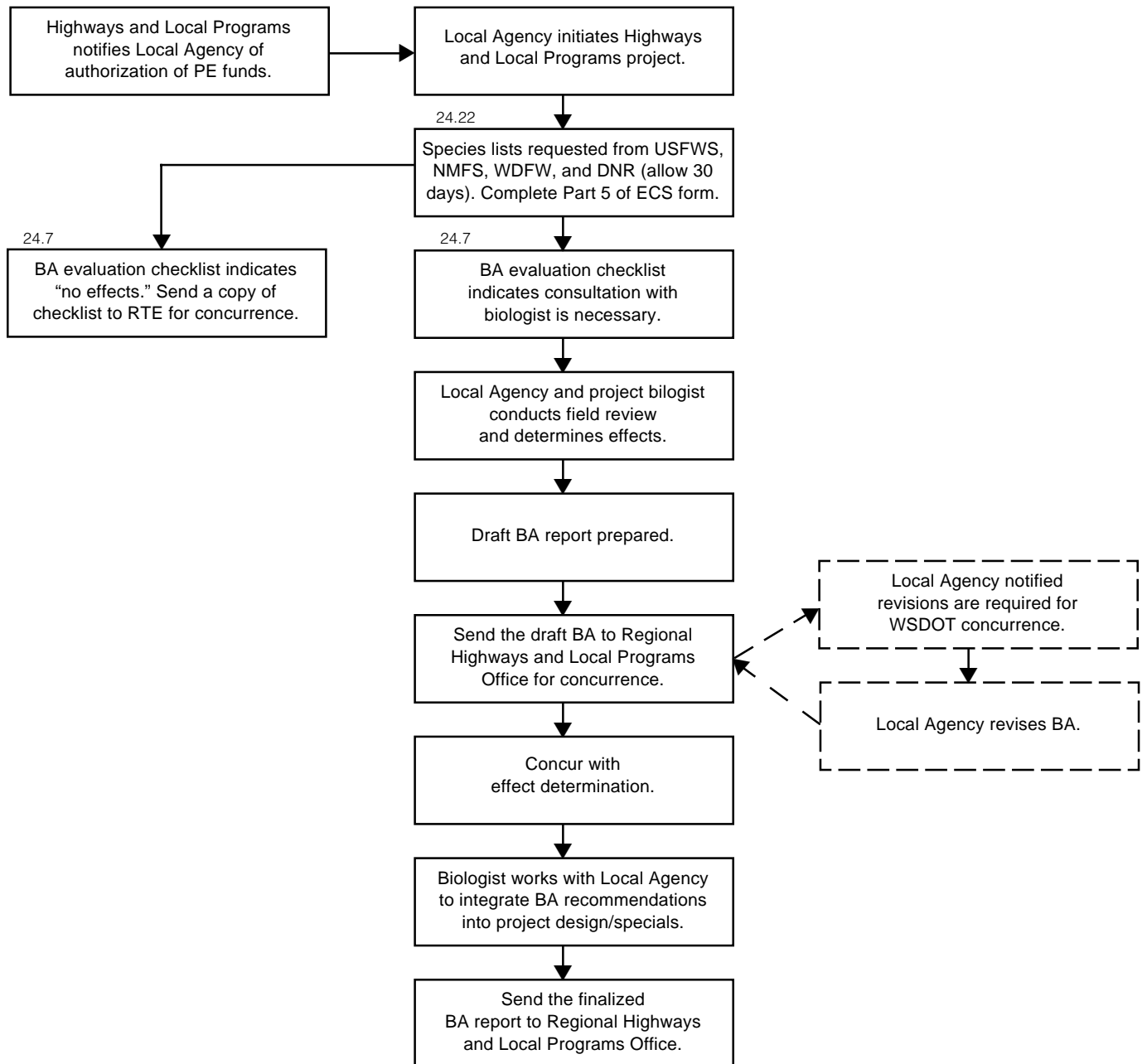
Federal Highway Administration

Is signed by the Federal Highway Administration on page 5.

Completed By

Indicate the name of the staff person who completed the form.

20:P65:DP/LAG2



A letter is sent to each of the following agencies requesting information on threatened, endangered, proposed, candidate, and species of concern.

U.S. Fish and Wildlife Service (USFWS)

Agency provides legal listings for terrestrial and freshwater species:

Western Washington:

Supervisor
U.S. Fish and Wildlife Service
510 Desmond Drive SE, Suite 102
Lacey, WA 98503-1273
(360) 753-9440

Eastern Washington:

Supervisor
U.S. Fish and Wildlife Service
Spokane Field Office
11103 E. Montgomery Drive, Suite 2
Spokane, WA 99206
(509) 921-0160

Central Washington:

Supervisor
U.S. Fish and Wildlife Service
Eastern Washington Field Office
517 S. Buchanan Street
Moses Lake, WA 98837
(509) 765-6125

National Marine Fisheries Service (NMFS)

Regional Highways and Local Programs Office provides legal listings for marine species.

Washington State Department of Fish and Wildlife (WDFW)

Agency provides site specific information on species monitored by the state that are documented in the Habitats and Species maps. This is sensitive, confidential information and you will need to sign an agreement to obtain it. Only include the letter from WDFW in the BA. Maps **cannot** be published in any public document. (This is the best information source on the presence of species near your project.) A fee may be associated with this request.

Supervisor
Priority Habitats and Species
Washington State Department
of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360) 902-2543

Washington State Department of Natural Resources (DNR)

Agency provides information on locations of sensitive plants and rare plant communities that are documented in the Natural Heritage Program (NHP) database.

Supervisor
Washington Natural Heritage Program
Division of Forest Resources
Department of Natural Resources
P.O. Box 47016
Olympia, WA 98504-7016
(360) 902-1667

Appendix 24.104 **ESA Species Listings Request Letter Template**

The letter will request all ESA species and habitat listings within your agency's jurisdiction. This information can be used for all projects within the agency's jurisdiction. Updates to these listings, however, must be obtained every six months. This can be done by requesting a complete new listings or submitting a copy of the previous listings and requesting updates. A copy of this letter is submitted to each agency contact in **Appendix 24.103**.

February 3, 1999

ATTN: Resource Agency Contact

RE: Species Listings Within *Local Agency's*
Jurisdiction

Dear Resource Agency Contact:

The *Agency name* is requesting all Endangered Species Act species and habitat listings within our agency's jurisdiction. Our agency understands this information must be updated every six months and the information can be used to evaluate all projects conducted within our jurisdiction. Our agency further understands the species and habitat listings may be updated prior to our six month update request, and it will be our responsibility to ensure that we obtain any updated information.

A map detailing the boundaries of our jurisdiction has been included for your use. If you have any questions, please either e-mail me at agency contact's e-mail address or call me at agency contact's phone number.

Sincerely,

Agency Contact

Enclosures

KEY:

Regular type — recommended wording

Italicized type — fill in with appropriate information

Bold type — key wording that should remain in letter

Agency Address

ATTN:

RE: *Project Name*
Federal Aid Project Number

Dear *Name of Agency Contact*:

Local Agency name is proposing to *project description*. We are preparing this assessment in response to a listing we received on *date* (FWS Reference #, *if listing is from USFWS, no number if from NMFS*). The listing indicated the potential presence of *listed species*.

The project is located *provide location including street, county, (TRS)*. Proposed work includes *project description*. Construction is planned for *months and year* and will take approximately *amount of time in days* to complete. *Describe any expected noise and disturbance issues generated from the project.*

A field review of the project site was conducted on *date* by *agency biologist*. Land use in the vicinity of the project area consists of *describe land use in terms of available habitat, existing noise disturbances, etc.*

Describe habitat present as it relates to each threatened and endangered species. Address presence of threatened and endangered species in habitat.

Review of the Washington State Department of Fish and Wildlife Habitats and Species maps *include all data bases reviewed or other sources such as local fisheries biologists* indicated that *provide information found, etc.*

Discuss impacts from construction for each listed species or guild of species (e.g., fish). Write one paragraph per species, include the no effect determinations.

We have determined that *select appropriate justifications, they may include: due to the location, the type of work proposed, time of year work is proposed for, lack of use of the project area, low level of use, the large amount of available habitat in the immediate vicinity of the project, etc.*

Make "no effect" determinations for each listed and proposed species, and impact determinations for candidate species and species of concerns. **It is our understanding that this satisfies our responsibilities under Section 7 (c) of the Endangered Species Act at this time, and we are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to re-evaluate potential project impacts if necessary. To ensure concurrence with these findings, we request that you transmit a letter signifying your agreement with these conclusions.** Please call *biologist* if you require any additional information or have any questions about this project.

Sincerely,

Attachments: Vicinity maps and photos

The following pages provide an example of what a detailed biological assessment document for a "may affect" determination may include. Each BA will be dictated by the project and site's unique and specific characteristics.

KEY:

Regular type — suggested wording

Italicized type — fill in with project specific information

PROJECT NAME
Biological Assessment for *Listed Species*
Federal Aid Project Number

SUMMARY

Provide a one paragraph summary of the project (TSR location), its impacts and the effect determination for each listed species.

INTRODUCTION

An endangered species listing for this project was received from the U.S. Fish and Wildlife Service on *date* (FWS ref. #). The letter indicated that the following species may be present in the vicinity of the project area.

<u>Name</u>	<u>Scientific Name</u>	<u>Federal Status</u>	<u>State Status</u>
-------------	------------------------	-----------------------	---------------------

List species here from listing, include species of concern.

An endangered species listing was also received from the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service on *date*. The letter indicated that the following species, *list species*, may occur in the area.

<u>Name</u>	<u>Scientific Name</u>	<u>Federal Status</u>	<u>State Status</u>
-------------	------------------------	-----------------------	---------------------

List species here from listing, include species of concern

A field review of the project site was conducted on *date or dates* by an *agency* biologist. The purpose of the site visit was to determine the status of listed and candidate species in the area and to evaluate the potential impacts of the project. Pertinent literature was reviewed, including information received from the Washington State Department of Fish and Wildlife's Habitats and Species maps and other information sources. *Provide a statement of what the databases indicated and discuss what other information sources, such as local biologists, were contacted.*

SETTING

The project is located in *county*, *TRS information*, including *vicinity map*. *Describe the project setting including local physiographic region, economic or resource conditions, general vegetation, levels of disturbance (e.g., nearby traffic, nearby marina, etc.), etc.*

PROJECT DESCRIPTION

Describe the project including discussions on clearing (give specific amount of area), grading, habitat alterations (what, how many feet off of the existing pavement will the project extend to?), tree removal (how many trees, what kinds, diameters, etc.), stream work, blasting, pile driving, sediment causing activities, type of equipment to be used, length of time construction will take, anticipated start and end dates, in water work windows, etc. The time of construction is very important to include. It is impossible to evaluate the impacts of the project on listed species without knowing when the disturbances will occur.

WATER RESOURCES

Describe the significant streams, lakes, rivers, and wetlands in the vicinity of the project and describe the fish habitat features, such as woody debris, riparian quality in the project area. If a body of water is present, describe the watershed, any limiting factors, average temperatures, stream bed composition, existence of pools/riffles/glides, amount of large woody debris, etc.

VEGETATION

Describe the general vegetation in the project area and impacted vegetation. Vegetation descriptions should be general in terms of habitat types rather than lengthy species lists unless listed plants are present. Address potential perch, roost, or nest trees, identify habitat for listed species in the vicinity of the project. Describe existing communities (e.g., undisturbed deciduous forest, disturbed coniferous forest); list dominant vegetation in communities, understory and shrub layers, herbaceous vegetation; list types and average dbh of trees in communities; is any vegetation suitable for nesting or foraging; etc.

SPECIES OF CONCERN

Include one major section for each listed species. Address: general species requirements such as food sources, habitat use, key aspects of habitat (nest, perch, roost trees, migration corridors, rearing areas, etc.), timing when species are most susceptible to disturbances, etc. Focus on the species' use of the project area and vicinity. Provide specific information on habitat in the project area, both the amount and quality, occurrence of species in the area, and the level of use in the area. Include direct observations with dates, WDFW or other records of sightings or use of the area by species in question, any surveys available, and observations made by other biologists such as WDFW biologists.

For fish, address: habitat in terms of whether it is migrating, spawning, rearing, or cover wintering habitat. Discuss run timing, in and out migration of adults and juveniles. (It may help to include a calendar showing the life history of a species by month.) Address riparian vegetation, pool and riffle habitat, water levels, and large woody debris. Temperature and water quality can be discussed in general terms if information is available. This information will be summarized in the impacts table included in the impacts section.

Address each listed species that is incidental to the project (has no point location) such as marbled murrelet flyovers, when no suitable habitat is present in the project vicinity or migrating peregrine falcons or salmon. For each species provide a short summary of their natural history, the availability of habitat in the project area, their expected use of the project area.

DESIGNATED CRITICAL HABITAT

For each designated critical habitat, describe the quality, location, amount, and importance (obtain this from the final ruling) of the critical habitat and the use of the habitat within the project area.

PROPOSED SPECIES OR CRITICAL HABITAT

Treat each proposed species as though it is a listed species. Provide their natural history, the availability of habitat in the project area, and their expected or actual use of the project area.

CANDIDATE SPECIES

For each candidate species, provide a short summary of their natural history, the availability of habitat in the project area, their expected or actual use of the project area.

SPECIES OF CONCERN

For each species of concern, provide a short summary of their natural history, the availability of habitat in the project area, and their expected or actual use of the project area. These species can be lumped by guild; e.g., address all bat species in one paragraph and all lampreys in one paragraph, etc.

POTENTIAL IMPACTS TO LISTED AND PROPOSED SPECIES

Address all impacts from the project, this discussion should consider the project both during construction and after it is in place. For most species, the impacts to be addressed include direct disturbance during construction, impacts to its habitat, and impacts to food resources.

- For disturbances, address all potential noise and activity type impacts; discuss if the project meets the species recovery plan guidance for noise disturbance.
- For impacts to habitat, determine the amount of habitat that will be impacted; determine if the project meets the species recovery plan.
- For impacts to food sources, address the potential impacts and how impacts can be minimized. Examples are impacts to water quality or loss of grazing habitat.
- Address interrelated, interdependent, and cumulative effects.
- Make an effect determination for each threatened, endangered, and proposed species.

POTENTIAL IMPACTS TO CANDIDATE SPECIES AND SPECIES OF CONCERN

Address any potential impacts to these species. Species can be lumped and addressed together if there are similar impacts; e.g., all fish and amphibian species, all bat species, etc. Make an impact assessment, do not make an effect determination for these species.

RECOMMENDATIONS

Provide recommendations to help the project minimize impacts to listed species. These may include the potential of habitat enhancement, use of best management practices, timing restrictions, etc. These recommendations must be included in the project. Normally, NMFS and USFWS require the inclusion of the recommendations in the project as part of the conditions of their concurrence.

Examples:

- Tree removal will occur between October 1 and December 31 to avoid owl and murrelet nesting seasons.
- Construction will occur between August 6 and October 31. Construction may take two years to complete.
- Trail construction shall be completed in the wintertime, when the sensitive species are dormant. Utilize hand tools and labor to construct the trail and avoid removing vegetation wherever possible.

- During vegetation removal, all trees and shrubs shall be felled into the area that will be cleared, and not into the surrounding forested areas or streams to minimize impacts to existing vegetation. All vegetation removed from construction areas must be removed from the site to avoid placing it in sensitive plant areas.
- Limits of clearing shall be flagged or fenced with temporary construction fencing. Trees not to be removed should be flagged or fenced off with temporary fencing.

CONCLUSIONS

Summarize the proposed project, include the listed species near the project and the appropriate conclusion. Make an effect determination for each listed and proposed species, and an impact assessment for the candidate species and species of concern.

REFERENCES

List all cited references.

APPENDICES

Include photos, simple project plans, copies of the listing letters for NMFS, USFWS, WDFW, and DNR.

Date

Regional Highways and Local Programs Engineer

Agency
Project Name
Federal Aid Project Number

Dear

Attached is the completed BA for the *Local Agency and project name* which has an effect determination of “May Affect, Not Likely to Adversely Affect” for any species or critical habitat within the project’s area. At this time we are requesting Highways and Local Programs and FHWA to review and concur with the BA effect determination so that this project can addendum the 7(d) project list.

With this request, *Local Agency* commits to: meet any and all mitigation requirements determined by NMFS and/or USFWS (to be outlined in their concurrence letters); and maintain continuous coordination with Highways and Local Program and FHWA until the successful completion of the concurrence process.

Local agency details the time critical aspects of the project to justify the inclusion of the project on the 7(d) list for this construction season.

Sincerely,

Local Agency’s Approving Authority

(Excerpt from 50 CFR 402.02)

Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:

- (a) actions intended to conserve listed species or their habitat;
- (b) the promulgation of regulations;
- (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
- (d) actions directly or indirectly causing modifications to the land, water, or air.

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential affects of the action on such species and habitat.

Biological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Effects of the action refers to the direct and indirect affects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Formal consultation is a process between the Services and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

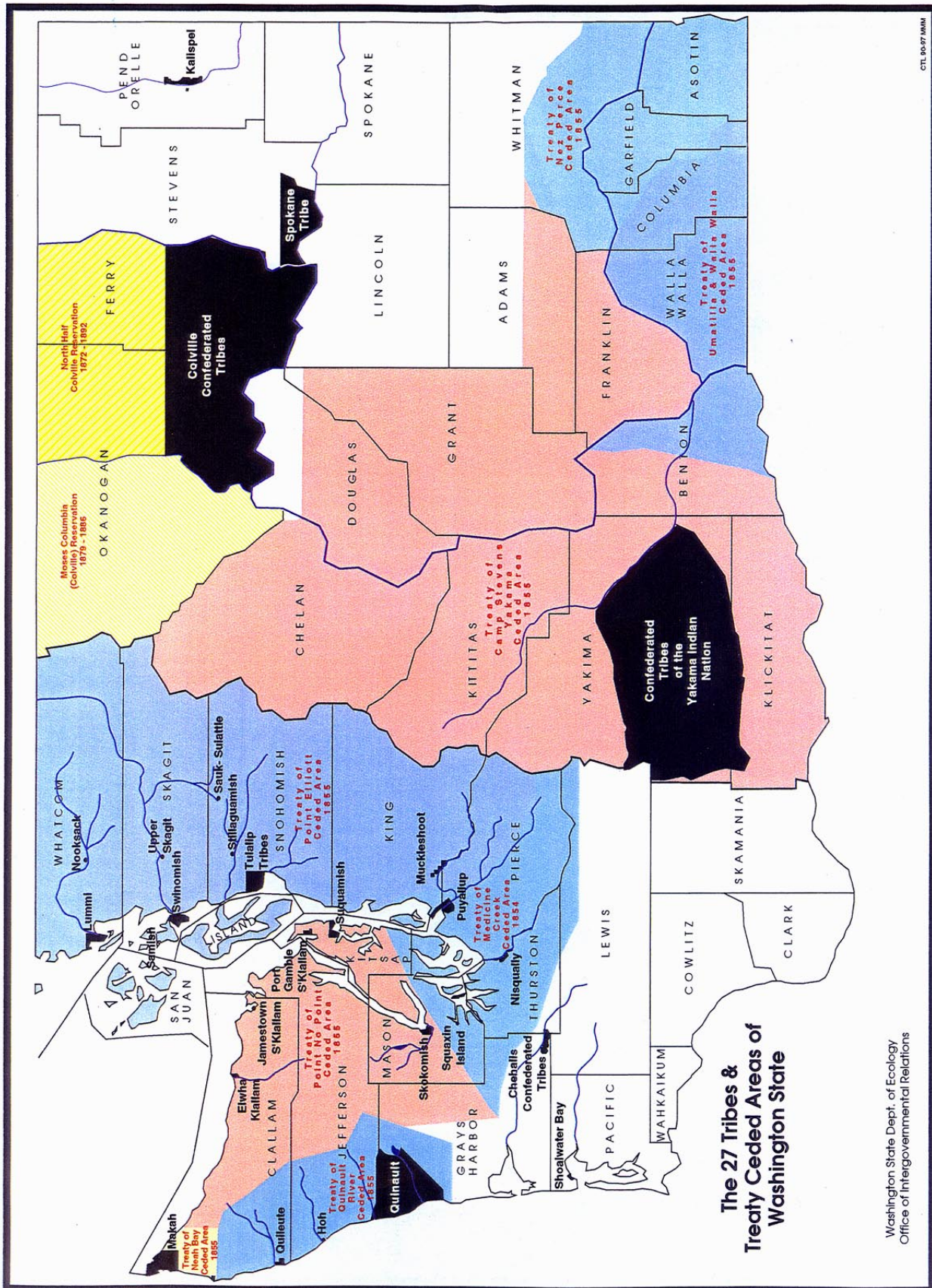
Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11-17.12.

Proposed species means any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under section 4 of the Act.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. (Fish and Wildlife regulations have expanded this definition to include significant alteration or disturbance of habitat.) (From ESA 1973)

27 Tribes and Treaty Ceded Areas of Washington State





Local Agency Environmental Classification Summary

Part 1 Project Description					
Summary Type <input type="checkbox"/> Preliminary <input type="checkbox"/> Final		Date Created		Date Revised	Revision Number
Federal Aid Project Number	Route	()		Local Agency Project Number	
Agency			Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other		
Project Title					
Begin MP _____ KP _____	End MP _____	Miles _____ KM _____	Township _____ Range _____		
County		Water Resource Inventory Area (WRIA) No. & Name			Within Puget Sound Basin? <input type="checkbox"/> Yes <input type="checkbox"/> No

Part 2 Permits and Approvals Required					
Yes	No	Permit or Approval	Yes	No	Permit or Approval
<input type="checkbox"/>	<input type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404 <input type="checkbox"/> Nationwide Type _____ <input type="checkbox"/> Individual Permit No. _____	<input type="checkbox"/>	<input type="checkbox"/>	Shoreline Permit
<input type="checkbox"/>	<input type="checkbox"/>	Coast Guard	<input type="checkbox"/>	<input type="checkbox"/>	State Waste Discharge Permit
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Zone Management Certification	<input type="checkbox"/>	<input type="checkbox"/>	Temp. Modification of Water Quality Standards
<input type="checkbox"/>	<input type="checkbox"/>	Critical Area Ordinance (CAO) Permit	<input type="checkbox"/>	<input type="checkbox"/>	Section 4(f)/6(f): Wildlife Refuges, Recreation Areas, Historic Properties
<input type="checkbox"/>	<input type="checkbox"/>	Flood Plain Development Permit	<input type="checkbox"/>	<input type="checkbox"/>	Water Rights Permit
<input type="checkbox"/>	<input type="checkbox"/>	Forest Practice Act Permit	<input type="checkbox"/>	<input type="checkbox"/>	Water Quality Certification - Sec. 401 Issued by _____
<input type="checkbox"/>	<input type="checkbox"/>	Hydraulic Project Approval	<input type="checkbox"/>	<input type="checkbox"/>	Tribal Permit(s), (If any) _____ _____ _____
<input type="checkbox"/>	<input type="checkbox"/>	Local Building or Site Development Permits	<input type="checkbox"/>	<input type="checkbox"/>	Other Permits, including GMA (List): _____ _____ _____ _____ _____
<input type="checkbox"/>	<input type="checkbox"/>	Local Clearing and Grading			
<input type="checkbox"/>	<input type="checkbox"/>	Natl. Historic Preservation Act - Section 106			
<input type="checkbox"/>	<input type="checkbox"/>	(NPDES) Municipal Stormwater Discharge			
<input type="checkbox"/>	<input type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction <input type="checkbox"/> Stormwater Site Plan <input type="checkbox"/> Temp. Erosion Sediment Control Plan (TESC)			

Part 3 Environmental Classification	
NEPA <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Class II - Categorical Excluded (CE) <input type="checkbox"/> Projects Requiring Documentation (Documented CE) (LAG 24.22) <input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Supplemental EIS (SEIS)	SEPA <input type="checkbox"/> Categorically exempt per WAC 197-11-800 <input type="checkbox"/> Declaration of Non-Significance (DNS) <input type="checkbox"/> Environmental Impact Statement (EIS) <input type="checkbox"/> Other Actions: <input type="checkbox"/> Adoption <input type="checkbox"/> Addendum

Part 4 Environmental Considerations	
Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information of necessary.	
1. Air Quality	Identify any anticipated air quality issues. Is the project included in Metropolitan Transportation Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No Is the project located in an Air Quality Non-Attainment Area (for carbon monoxide, ozone, or PM10)? <input type="checkbox"/> Yes <input type="checkbox"/> No Is the project exempt from Air Quality conformity requirements? <input type="checkbox"/> Yes <input type="checkbox"/> No
2. Critical/Sensitive Areas	Identify any known Critical or Sensitive Areas as designated by local Growth Management Act ordinances. a. Aquifer Recharge Area, Wellhead Protection Area, or Sole Source Aquifer. b. Geologically Hazardous Area c. Habitat. List known fish and wildlife species and describe general habitat. <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <i>National Marine Fisheries Service (NMFS):</i> <div style="border: 1px solid black; height: 80px; margin-top: 5px;"></div> </div> <div style="width: 45%;"> <i>U.S. Fish and Wildlife Service (USFWS):</i> <div style="border: 1px solid black; height: 80px; margin-top: 5px;"></div> </div> </div> d. Wetlands. Estimate impacted categories and acreage: (1) Are wetlands present? <input type="checkbox"/> Yes <input type="checkbox"/> No (2) Estimated area impacted: _____ Acres
3. Cultural Resources/Historic Structures	Identify any historic or archaeological resources. Does the project fit into any of the exempt types of projects listed in Sect. 24.82(a) of the LAG Manual? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, has consultation with the SHPO/THPO and Tribal consulting parties been concluded? <input type="checkbox"/> Yes <input type="checkbox"/> No
4. Flood Plains or Ways	Is the project located in a 100-year flood plain? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, is the project located in a 100-year floodway? <input type="checkbox"/> Yes <input type="checkbox"/> No Will the project impact a 100-year flood plain? <input type="checkbox"/> Yes <input type="checkbox"/> No

Part 4 Environmental Considerations - Continued	
5. Hazardous and Problem Waste	Identify potential sources and type. Is the project likely to involve site clean-up? <input type="checkbox"/> Yes <input type="checkbox"/> No
6. Noise	Identify potential sensitive receptors or previous mitigation commitments.
7. Parks, Recreation Areas, Wildlife Refuges, Historic Properties, or Scenic Rivers/Byways, 4(f)/6(f) Lands.	Identify.
8. Resource Lands	Identify areas of impact. a. Agricultural b. Forest/Timber c. Mineral
9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters	a. Identify by name, proximity to project and Washington Stream Catalog Number. Fisheries WA Stream No. _____ Ecology 303d Report No. _____ b. Identify stream crossing structures by type.

Part 4 Environmental Considerations - Continued	
10. Tribal Lands	Identify.
11. Visual Quality	Will the project impact roadside classification or visual aspects? <input type="checkbox"/> Yes <input type="checkbox"/> No
12. Water Quality/Storm Water	Is the project likely to increase runoff or affect water quality? <input type="checkbox"/> Yes <input type="checkbox"/> No Will the project include water quality/quantity treatment for the new pavement? <input type="checkbox"/> Yes <input type="checkbox"/> No Will the project include water quality/quantity treatment for existing pavement? <input type="checkbox"/> Yes <input type="checkbox"/> No Has a NPDES municipal general permit been issued for this WRIA? <input type="checkbox"/> Yes <input type="checkbox"/> No
13. Previous Environmental Commitments	Have previous environmental commitments been made in the project area? <input type="checkbox"/> Yes <input type="checkbox"/> No Identify.
14. Long-Term Maintenance Commitments	Are long-term maintenance commitments necessary for this project? <input type="checkbox"/> Yes <input type="checkbox"/> No Identify.

Part 5 Biological Assessment Evaluation

Answer **ALL** questions. Refer to the Part 5 Biological Assessment Checklist Instructions before completing this section.

Permits

1. Are any of the following environmental permits, as indicated in Part 2, required: HPA, 404 wetlands, or local clearing and grading, shorelines, or permits related to critical or sensitive areas ordinances? ☐ Yes ☐ No

Location

	2. Will any construction work occur within 0.5 miles of any of the following:	3. Does the project involve blasting, pile driving, concrete sawing, rock drilling, or rock scaling activities within 1 mile of any of the following?
Bald eagle nesting territories, winter concentration areas, or bald eagle communal roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Spotted owl management circles or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Marbled murrelet nest or occupied stand, or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Western snowy plover designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Federal or state threatened, endangered, proposed, or candidate plant species locations or documented habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Canada lynx habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Gray wolf habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Grizzly bear habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Brown pelican night roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Woodland caribou habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
A mature coniferous or mixed forest stand?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know

4. Will any construction work occur within 300 feet of Puget Sound, Strait of Juan de Fuca, or the Pacific Ocean? ☐ Yes ☐ No
5. Will any construction work occur within 300 feet of any permanent or intermittent waterbody, **which supports or drains into a listed fish supporting** waterbody? ☐ Yes ☐ No ☐ Don't Know
6. Will any construction work occur within 300 feet of any wetland, pond, or lake that is connected to **any** permanent or intermittent waterbody? ☐ Yes ☐ No ☐ Don't Know
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? ☐ Yes ☐ No ☐ Don't Know

Stormwater

8. Does the project create **any** new impervious surface area? If yes, go to 8a. ☐ Yes ☐ No
- 8a. Will post-project stormwater treatment infiltrate, with pretreatment, all new impervious surface area; OR will stormwater treatment facility treat 140% times the area of new impervious surface area? ☐ Yes ☐ No ☐ Don't Know

Construction Activities

9. Will any construction waste materials (e.g., asphalt or concrete grindings or byproducts, construction-related chemicals, fill materials, or excavated materials) from the project be disposed of at a location other than a permitted disposal site? ☐ Yes ☐ No ☐ Don't Know
10. Will the project involve any in-water work? ☐ Yes ☐ No ☐ Don't Know
11. Will the project effect the water regime of, or utilize any water from a waterbody, which supports or drains into a listed fish supporting waterbody; or any wetland, pond, or lake? ☐ Yes ☐ No ☐ Don't Know
12. Will construction work occur outside the existing pavement? If Yes, go to 12a. ☐ Yes ☐ No
- 12a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling, or modifications of vegetation or tree cutting? ☐ Yes ☐ No

Determination

If all the above questions were marked No (with the exception of Question 8a.), then check **No Effect**. If any of the above items were checked Yes or Don't know, but an adequate justification has been provided to support a no effect determination, then check **No Effect (with justification)**. If any of the above items were checked Yes or Don't Know (with the exception of Question 8a.), and a Biologist is required to conduct a review and evaluate the project, then check **Further Review Needed**.
Note: If a biologist is required to conduct a review and evaluate the project, this does not preclude a no effect determination.

- ☐ **No Effect** (The proposed project will have no effect on Federally listed or proposed species, and the proposed project will not result in the destruction or adverse modification of designated or proposed critical habitat).
- ☐ **No Effect (with justification)**
- ☐ **Further Review Needed**

Justification Narrative (Required if any item in Section 5 was checked Yes).

Use Justification Supplement Sheet if additional space is required to complete this section.

Part 6 Approval Signatures

Local Agency Approving Authority	Date	Regional Highways and Local Programs Engineer / Asst. Secretary	Date
Federal Highway Administration	Date	Completed By	
		Telephone _____ Fax _____	

**Appendix 24.111 Local Agency Environmental
Classification Summary — Supplemental Sheet**

**Supplement Sheet - Local Agency
Environmental Classification Summary**

Justification Narrative - Continued

DOT Form 140-100 EF - Supplement
Revised 9/2000

Local Agency Environmental Classification Summary

Instructions

Do not complete this section if a Biological Assessment has already been completed. Provide date Biological Assessment was completed, author, and effect determination in the space provided at end of the checklist.

This section of the Environmental Classification Summary will determine if the proposed project: 1) results in a no effect determination for Federally listed and proposed species, 2) will not result in the destruction or adverse modification of designated or proposed critical habitat; or 3) if a Biological Assessment is required. This evaluative key can be used in the following ways:

1. If none of the responses to the questions in this section result in the need to have a Biologist conduct a field review and evaluate the project, a signed copy of this checklist can be used as the Biological Assessment document.
2. If any of the questions in this section were checked Yes (requiring a Biologist to conduct a field review and evaluate the project), but additional information can adequately support a no effect determination, either because of the limited nature of the project and/or because of extenuating circumstances, that information should be provided at the end of the checklist.

Examples of limited project types may include but are not limited to: crossing signals, street lights (illumination), signal control boxes, guardrail retrofit, traffic lights, transportation signs, sidewalk replacement, and clearing of small areas of vegetation (e.g., several square meters for sign installation).

Submit the checklist and the justification narrative as your Biological Assessment document. Note: If justifications are not adequate, a Biologist may still be required to evaluate the project

3. If any of the questions in this section were checked Yes, and do not meet the conditions of either no. 1 or no. 2, then we recommend a Biologist conduct a field review and evaluate the project.
4. Stormwater. For information on stormwater guidance and effect determination criteria, refer to the Interim Guidelines for ESA Stormwater Effects Guidance for Projects located in the WSDOT Local Agency Guidelines Manual, Section 24.74.
5. Species Information. In order to adequately answer the questions in this section, the following species lists for Federally listed and Proposed species are required: U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Species information for Candidate species and Species of Concern is recommended for evaluation in the event that these species are listed prior to project completion. Include a copy of the species list (s) in the BA and cite the FWS reference # in your cover letter.

To obtain information on the location and the potential for the presence of Federally listed, Proposed, Candidate, and Species of Concern (terrestrial, inland fish, and plant species; and their designated or proposed critical habitat), contact the U.S. Fish and Wildlife Service (Yvonne Detlaff - 360-753-9582). For Federally listed, Proposed, and Candidate marine species and anadromous fish species; and their designated or proposed critical habitat, contact the appropriate Regional Highways and Local Programs Office, or the National Marine Fisheries Service.

WSDOT recommends that a species list, for State listed species, be obtained from the Washington State Department of Fish and Wildlife, and the Washington State Department of Natural Resources for additional species and habitat information.

6. Noise Disturbance. Noise disturbance, in most cases, is an issue only for terrestrial species; although the potential for impacts to aquatic species exists as well (e.g., displacement from spawning, rearing, and foraging areas; and to a lesser extent, modifications to incubation habitat, may result from blasting or pile driving activities). Noise disturbance, above existing levels, has the potential to disrupt reproductive activities by driving species away from their nesting and/or foraging areas, exposing eggs or juveniles to environmental elements and predation, or causing the adults to abandon young leading to their death. Species of particular concern, are bald eagles, marbled murrelets, and spotted owls; as well as gray wolves, grizzly bears, Canada lynx, brown pelicans, and woodland caribou. Noise levels that exceed existing levels, appreciably (e.g., blasting, piling driving, concrete sawing, rock drilling, and rock scaling), have the greatest potential for adverse effects. Effects from these activities can extend out to one mile. Project activities that occur over water, or project activities that occur in areas that lack topographic relief and/or forested habitat (line-of-sight of nest trees, which may extend greater than one mile from the project area), need to consider potential impacts to species beyond one mile. The effects of noise can be modified by topography and vegetation structure and density.

Definitions

1. Intermittent Stream. Intermittent streams are those which flow only certain times of the year, when they receive water from springs, or runoff. Flow generally occurs for several weeks or months in response to snow melt or seasonal precipitation, which results in ground water discharge, or surface-water runoff. Intermittent streams can provide off-channel refugia, rearing and foraging habitat, and potentially, spawning habitat for fish.
2. Project and Action areas. An evaluation of potential impacts to all areas associated with the proposed action is required. Potential impacts (direct and indirect effects) to all habitat types and species needs to be considered in completing this section. The area of potential impacts usually extends beyond the project area.

Project area. The project area includes all areas immediately and directly associated with, and affected by, the proposed action.

Action area. The action area is the area that is directly and/or indirectly affected (all areas of potential impacts) by the proposed action, and not merely the immediate area involved in the action.

The action area is usually larger than project area or project vicinity. The action area includes areas that may be affected later in time (indirect effects) from the actions of the proposed project. For example: clearing of vegetation in summer months (periods of lower precipitation) may not have an immediate (direct) effect on sediment importation rates (although it may have effects on other factors - temperature, for example), but exposed soils, loss of canopy cover, or loss of large woody debris in the watershed may affect [during periods of heavy precipitation (fall, winter, and spring, or during peak periods of snow melt] infiltration rates, effective ground cover, and runoff rates that change the flow hydrology within a watershed (or sub-watershed) that leads to levels of sediments being imported in to a system at rates above the natural disturbance regime. The extent of effects to the system may be one mile or many miles, down and/or up-stream, depending on the type, scale, and intensity of impacts to environmental factors.

25.01 General Discussion

Since federal regulations do not allow the certification of right-of-way to be subdelegated, the Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition of right-of-way on all FHWA funded transportation projects in the state.

For a current project to be eligible for federal funding on any part of the project, the project's right-of-way must be acquired in accordance with the requirements of this manual. (Right-of-way acquired prior to July 1, 1971, is exempt.)

To assure fair and equitable treatment of displaced persons ("displacees"), and encourage and expedite acquisitions by negotiations, the acquisition process is regulated by Chapter 8.26 RCW and WAC 468-100.

WSDOT may, by written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights-of-way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally assisted transportation projects. It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Guidance is provided in the WSDOT *Right of Way Manual* (M 26-01).

Responsibilities for non-project related (program) approval actions (FHWA (F), State (S), or Local CA Agency (L)) are shown below.

Action Non-NHS

- | | |
|--|-----|
| a. Non-highway Use and Occupancy of Right-of-Way | S/L |
| b. Air Space Agreements | S/L |
| c. Disposal of Right-of-Way No Longer Needed | S/L |
| d. Temporary Use of Right-of-Way | S/L |
| e. Disposal of Access Control and Relinquishment of Right-of-Way | S/L |

Project related approval actions.

Action Non-NHS

- | | |
|-----------------------------------|-----|
| a. Use of Fee Negotiators | S/L |
| b. Interest on Right-of-Entry | S/L |
| c. Hardship and Protective Buying | F |
| d. Use of Fee Attorneys | S/L |
| e. Appraisal Fees | S/L |
| f. Land Service Facilities | S/L |
| g. Right-of-Way Certificates | S/L |

.011 WSDOT Services. WSDOT is committed to an ongoing program which will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate a Local Agency Right-of-Way Coordinator (LA Coordinator) in each region to provide information and establish appropriate state staff contacts; provide training and educational opportunities for local agencies through workshops and acquisition course offerings; and provide mutually acceptable technical and advisory services as necessary to accomplish the acquisition program.

WSDOT will consult and advise the local agency concerning real property acquisition activities to ensure that right-of-way is acquired in accordance with provisions of state and federal laws and FHWA directives.

At the earliest possible date, the local agency should advise the Region LA Coordinator of the need for WSDOT assistance. If WSDOT is asked to perform the appraisal, negotiation, or relocation functions, the local agency should obtain the estimated cost of such assistance from the Region LA Coordinator and include it in the Local Agency Agreement. The Coordinator will arrange for the preparation of an agreement if WSDOT has the personnel available to acquire the necessary right-of-way (Appendix 25.141). WSDOT will furnish the local agency with an estimate of the cost of WSDOT's services.

When WSDOT provides these services, WSDOT will prepare all necessary documentation and certification.

.012 Consultant Services. When the local agency does not have adequate staff to perform appraisal, negotiation or relocation functions, it may contract for these services and obtain federal participation in the costs.

The local agency should contact the Regional Highways and Local Programs Engineer for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA has determined the consultant agreements for right-of-way services must meet the consultant contracting requirements as described in Chapter 31 "Using Consultants." See Chapter 31 Appendixes for sample consultant agreements for appraisal and negotiation.

25.02 Right-of-Way Acquisition Procedures

Before requesting authority to acquire right-of-way, the local agency must have secured approval of acquisition procedures (Appendix 25.142). Acquisition procedures are submitted to the Regional Highways and Local Programs Engineer for review prior to final execution by the local agency. Highways and Local Programs forwards the procedures through the Region LA Coordinator for approval. The local agency will be approved to acquire right-of-way based upon the submitted procedures. The level at which an agency will be approved will be dependent upon the agency's staff qualifications. An agency with minimal staff may be approved to acquire a single project with direct supervision by the Region LA Coordinator. Highways and Local Programs notifies the local agency of the approval, with a copy to the Region LA Coordinator. Periodic reviews of procedures will be conducted on agency's acquiring right-of-way on federal aid projects. Procedures should include the following:

- a. Agreement to conform with state and federal laws and FHWA regulations. The agency should agree to follow the state's *Local Agency Guidelines Manual (M 36-63)* and *Right-of-Way Manual (M 26-01)* or the agency's own manual if they have a WSDOT approved right-of-way manual.
- b. A listing of the positions performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management.
- c. A listing of current staff filling the above positions and a brief statement of their qualifications.
- d. A policy for handling administrative settlements including the approving authority(s) and process.
- e. Appraisal waiver process (see Section 25.051)

.021 No Right-of-Way Acquisition. Local agencies, after determining that new right-of-way will not be required for the current project, need only check the appropriate box on the project prospectus (see Chapter 21). If it is later determined that right-of-way is required, a Right-of-Way Project Funding Estimate (Appendix 25.143) or a True Cost Estimate (Appendix 25.144) must be prepared and the Region Local Programs Engineer and the Region LA Coordinator notified.

.022 Acquiring Right-of-Way. Acquisition of right-of-way may be performed by the following entities:

- By WSDOT on a local agency's behalf. In this case, an agreement between WSDOT and the local agency will be prepared and approved by the Director of Real Estate Services.
- By a local agency that is adequately staffed, equipped, and organized to discharge its right-of-way responsibilities and has right-of-way procedures approved by WSDOT. Staff may consist of qualified contract

personnel and/or licensed private firms (see RCW 18.85.010) in addition to or in lieu of regular employees of the agency.

- By another local agency that meets the requirements above.

25.03 Voluntary Acquisition

An agency with approved right-of-way acquisition procedures may choose to acquire property using the voluntary acquisition process set forth in 49 CFR 24.101(a)(2). To qualify for this process, the agency must choose **not** to use their eminent domain authority and:

- a. Clearly advise the property owner, in writing, prior to making an offer that the agency will be unable to acquire the property in the event that negotiations fail.
- b. Provide the owner with an estimate of the fair market value of the property.
- c. Provide relocation assistance to any tenant(s).

If an agency chooses to use this method of acquisition, the federal regulations will not apply to the acquisition process except as mentioned above.

In the event that any parcel on the project can not be purchased voluntarily, the entire project must then be purchased using all applicable federal regulations.

Note: Acquisitions using this process are subject to real estate excise tax.

25.04 Funds for Right-of-Way

.041 Acquisition With Federal Funds. Authorization of federal funds for right-of-way requires compliance with Chapter 14, FHWA approval of environmental documents, and the submittal of the following documents to the Regional Highways and Local Programs Engineer.

- Local Agency Agreement Supplement.
- Estimate of probable project costs and expenses broken down by parcel. The True Cost Estimate (Appendix 25.144) can be used when all parcels are to be appraised or donated. The Right-of-Way Project Funding Estimate must be used if the agency wishes to make use of the appraisal waiver process (see Section 25.051).
- Right-of-Way plan.
- Relocation plan (if relocation is required — contact the LA Coordinator for assistance).

The right-of-way plans should at least show the following information and meet the requirements of WAC 332-130:

- Survey line or centerline for the alignment;
- The old and new right-of-way limits with sufficient ties to the survey line to allow for legal descriptions of the areas to be acquired;

- Show all rights to be acquired, for example, easements and permits;
- Show the ownership boundaries of the parcels with rights to be acquired;
- Parcel identification number should be shown;
- Show the area of the parcel to be acquired; and
- Show the area of the remainder.

All plan sheets shall carry the seal and signature of a registered Professional Engineer or land surveyor in accordance with RCW 18.43.070 and RCW 58.09. If the plan makes a land boundary determination, it should be approved by a PLS.

Once FHWA approval has been obtained, the Assistant Secretary for Highways and Local Programs will notify the local agency of authorization to acquire right-of-way. No acquisition costs are eligible prior to this authorization.

.042 Acquisition With Local Agency Funds. If federal funds are to be used in any part of the project, federal guidelines for acquisition of the right-of-way must be followed. For projects that involve local agency funds only for right-of-way acquisition, the Local Agency must have the following documents prior to starting the acquisition process:

- Right-of-way plan;
- Relocation plan (if relocation is required, the relocation plan must be submitted to the Region Local Programs Engineer. **The local agency need not wait for written authorization to acquire right-of-way.**

The right-of-way plans should at least show the following information and meet the requirements of WAC 332-130:

- Survey line or centerline for the alignment;
- The old and new right-of-way limits with sufficient ties to the survey line to allow for legal descriptions of the areas to be acquired;
- Show all rights to be acquired, for example, easements and permits;
- Show the ownership boundaries of the parcels with rights to be acquired;
- Parcel identification number;
- Show the area of the parcel to be acquired; and
- Show the area of the remainder.

All plan sheets shall carry the seal and signature of a registered Professional Engineer or land surveyor in accordance with RCW 18.43.070 and RCW 58.09. If the plan makes a land boundary determination, it should be approved by a PLS.

A copy of the right-of-way plan must be made available at the time of certification. It is advisable, but not required, to submit a copy to the LA Coordinator through the Regional Highways and Local Programs Engineer for review. This review will help minimize potential problems which surface during the certification process.

.043 Acquisition in Advance of NEPA Clearance. There are four circumstances under which right-of-way can be acquired in advance of NEPA clearance:

- An agency may use its own funds to purchase R/W prior to NEPA clearance and may apply the purchase price (or if donated, the fair market value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). They cannot be reimbursed for these project costs, however.
- An agency may use its own funds to purchase R/W prior to NEPA clearance and be reimbursed. **HOWEVER**, they must meet the very stringent requirements of 23 U.S.C. 108 (c)(2)(c & d), as explained in 23 CFR 710.501(c). This option (which requires the Governor's and EPA's sign-offs) will be seldom used.
- An agency may purchase R/W prior to NEPA clearance under the protective buying and hardship acquisition provisions, as per 23 CFR 710.503, and be reimbursed. Note, however, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.
- An agency may purchase R/W prior to NEPA clearance under the corridor preservation provisions of 23 CFR 630.106 (3) & (4) and be reimbursed. This process is similar to the process for protective buying (see 3 above). Generally, this is only done for parcels which will not require any displacement. Note, however, that as with hardship and protective buying, these purchases are in advance of formal NEPA clearance of the project and individual clearance via a Categorical Exclusion is required.

25.05 Appraisal

The requirements pertaining to appraisal of property to be acquired are given in Chapter 4 of the WSDOT *Right of Way Manual*, M 26-01. If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the Region LA Coordinator.

The appraiser shall be an experienced, qualified appraiser. As a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria will be considered qualified

for FHWA projects. For FHWA projects subsequent to July 1, 1991, the appraiser must be certified per RCW 18.140 if the appraisal problem requires more than the comparative approach to value.

The appraiser shall prepare an Appraisal Report which is a written document containing at least the following:

- a. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
- b. Identification of the property and its ownership.
- c. A statement of appropriate contingent and limiting conditions if any.
- d. An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s) if any.
- e. Identified photographs of the property including all principal above-ground improvements or unusual features affecting the value of the property.
- f. A listing of the buildings, structures, fixtures, and other improvements which the appraiser considered part of the real property to be acquired.
- g. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
- h. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.
- i. The date to which the estimate of just compensation applies.
- j. The certification, signature, and date of signature of the appraiser.
- k. Other descriptive material (maps, charts, plans, photographs).
- l. The federal aid project number and parcel identification.
- m. Report of appraiser contact with owner.

Sample appraisal report forms can be found in Appendix 25.145.

.051 Appraisal Waiver. In certain cases, an appraisal can be waived. To qualify the just compensation, based on the Right-of-Way Project Funding Estimate or its equivalent, must be \$10,000 or less per parcel. The acquisition must be uncomplicated and the only damages will be minor cost to cure items.

In such instances where the appraisal is waived, just compensation should be based on comparable sales. All data used to arrive at just compensation must be included

in the project file. When the waiver is used, it is important that the local agency determines that the offer being made is fair and equitable. The owner must be informed that an appraisal was not done. If the owner wants an appraisal, the local agency is required to have an appraisal completed per guidelines of this section. See Appendix 25.146 for a sample appraisal waiver procedure.

.052 Appraisal Review. The requirements pertaining to appraisal review of the property to be acquired is given in Chapter 5 of the WSDOT *Right of Way Manual*, M 26-01.

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT Review Appraiser, on the approved list of review appraisers maintained by WSDOT or a permanent employee of the acquiring agency who is authorized by the approved right-of-way procedures to review appraisals. For agency staff to qualify as a review appraiser, an individual must have a minimum of five years of full time narrative real estate appraisal report writing experience, two years of which must be with eminent domain appraisals, or have at least six months experience as a review appraiser for either WSDOT or FHWA.

The reviewing appraiser should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the reason(s) why it was not made.

The reviewing appraiser shall examine the Appraisal Reports to determine that they:

- a. Are complete in accordance with the *Local Agency Guidelines* and contain the criteria required by the WSDOT *Right of Way Manual*, Chapter 4, Appendix 4-1 (Appraisal Guide).
- b. Follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing state law.
- c. Include consideration of compensable items, damage, and benefits, but do not include compensation for items noncompensable under state law.

Prior to finalizing the estimate of just compensation, the reviewing appraiser shall obtain corrections or revisions of Appraisal Reports which do not substantially meet the requirements set forth in the *Local Agency Guidelines*. These shall be documented and retained in the parcel file.

The reviewing appraiser may supplement an Appraisal Report with corrections of minor mathematical errors as long as such errors do not affect the final value conclusion. The reviewer may also supplement the appraisal file where the following factual data have been omitted:

- a. Project and/or parcel number.
- b. Parties to transaction, date of purchase, and deed-book reference to sale of subject property and comparables.
- c. Statement that there was no sale of subject property in the past five years.
- d. Location, zoning, or present use of subject property or comparables.

The reviewing appraiser shall initial and date corrections and/or factual data supplements to the Appraisal Report. The reviewing appraiser may conclude a value other than that concluded in the appraisal only if the conclusion is supported by relevant market data and analysis in the review document.

The reviewing appraiser shall place in the parcel file a signed and dated statement (Appendix 25.147) setting forth:

- a. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.
- b. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
- c. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
- d. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

It is the responsibility of the **agency** to set Just Compensation. This can be accomplished by adding a line to the bottom of the review appraiser's certificate as shown in Appendix 25.147.

25.06 Title

The agency will acquire evidence of the condition of title for all properties from which rights are to be acquired. It is suggested that a title report be ordered from a title company and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

In general, the elements necessary to acquire the needed interest are:

- a. Acquisition instruments signed by all parties with an interest in the fee title.
- b. Releases from mortgages and deeds of trust as the agency determines to be reasonable.

- c. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
- d. Releases of priority liens, such as material man's lien, judgments, state tax liens, and federal tax liens.

25.07 Negotiations

Various requirements in negotiating an acquisition of property are found in Section 3-4.1C of the WSDOT *Right of Way Manual*, M 26-01.

If a local agency uses a consultant fee negotiator, the negotiator must meet the applicable state licensing requirements (verify with the Department of Licensing).

For local agency staff to be approved to acquire property without direct supervision by the LA Coordinator, they must have either an Associate Degree in real estate or a Bachelor Degree or equivalent experience. In addition, they must have two years full time experience in real estate acquisition, sales leasing, appraisal, title, escrow or property management. One year of experience must be in eminent domain acquisition. Additional experience in eminent domain acquisition can replace education on a one for one basis.

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LA Coordinator as explained in the Procedures Approval letter. At a minimum, all offers must be reviewed before presenting them to the property owner.

A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. Recognizing the fact that the use of two separate individuals as appraiser and negotiator on a low-value taking can be both difficult and expensive, the use of a single individual to both appraise and negotiate a parcel is permitted where the value of the acquisition is \$10,000 or less. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

Before initiating negotiations for real property, the agency shall establish the just compensation which shall not be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if the owner has indicated a willingness to donate the right-of-way after being informed of their right to receive just compensation.

A donation may be accepted only after the owner has been informed in writing of their right to just compensation. This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements.

Right-of-way obtained through normal zoning, subdivision or building permit procedures requiring the donation or dedication of strips of land may be incorporated into a federal aid project without jeopardizing participation in other project costs.

The agency must notify the property owner of the availability of a statutory evaluation allowance not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the agency's offer.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

- a. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
- b. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
- c. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
- d. The agreement has been reached without any type of coercion.

.071 Negotiations by Mail. If no relocation is involved, the local agency may conduct right-of-way negotiations as follows:

- a. Mail to the owner the fair-offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for signature), property plat or sketch showing take and effects on remainder, and a copy of the acquisition brochure.
- b. Within about two weeks, make a follow-up phone call (documented in file). Answer questions or, if owner requests it, make an appointment for personal contact.
- c. Follow normal procedures for further negotiations.

25.08 Donated Property

Donations of right of way can be accepted only after the owner has been notified of their rights to receive just compensation. A signed donation statement must be included in each parcel file (Appendix 25.148)

Section 323 of 23 U.S.C. provides for using the value of donated lands as part of the match against an agency's contribution to the project. Certain conditions need be met.

- The credit may only be applied to a federal aid project if Federal Financial assistance was not used in **any** form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.
- The donation must be related to the project requiring the donated land.
- Donations of privately owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes.

- Donations of publicly owned real estate after June 8, 1998, are eligible for credit purposes.

For sample donation letters, see Appendix 25.148.

25.09 Administrative Settlements

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to expeditiously acquire real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a right-of-way acquisition case in which the agency has administratively approved payment in excess of fair market value as shown on the agency's approved determination of value.

- a. Any administrative settlement which exceeds the fair market value must be documented and thoroughly justified in order to be eligible for federal aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region LA Coordinator.
- b. The local agency shall document the following and make it available for review by WSDOT if it is not already part of the agency's approved procedures:
 1. Identify the responsible official who has the authority to approve administrative settlements, and
 2. Describe the procedure for handling administrative settlements.
- c. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including, but not limited to, the following:

1. All available appraisals, including the owner's, and the probable range of testimony in a condemnation trial.
2. Ability of the agency to acquire the property, or possession, through the condemnation process to meet the construction schedule. Impact of construction delay pending acquisition.
3. The negotiator's recorded information.
4. Recent court awards in cases involving similar acquisition and appraisal problems.
5. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
6. Estimate of trial cost weighed against other factors.

25.10 Relocation

The regulations governing relocation assistance are covered in Title 49, Code of Federal Regulations, Part 24.

The majority of local agencies will find that it is not economically feasible to maintain staff to perform the relocation function. Those agencies who have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other agencies should contact their Region LA Coordinator for help in having WSDOT contract to provide relocation services or for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, a relocation plan must be submitted prior to right-of-way funding authorization. Since relocation plans are unique to each project requiring them, no sample is provided. Contact the Region LA Coordinator for assistance in preparing relocation plans and carrying out relocation activities.

25.11 Right-of-Way Certification

After right-of-way acquisition has been completed and about one month before the federal aid project is to be advertised for contract, the right-of-way certification must be submitted to the Regional Highways and Local Programs Engineer.

There are three categories of certifications.

- #1 **All Right-of-Way Acquired.** Legal possession has been obtained but trial or appeal of cases may be pending. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements. (Appendix 25.149)
- #2 **Right to Occupy All Right-of-Way Acquired.** Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements. (Appendix 25.150)

- #3 **All Right-of-Way Not Acquired.** *This certification is to be used only in very unusual circumstances and with prior approval of the LA Coordinator.* Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. The agency must adequately explain why construction of the project before acquisition is complete, is in the public good. The agency will ensure that occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience or coercive action. All unacquired parcels will be identified and a realistic date given for completion of acquisition and relocation. An explanation of why the properties are not acquired and how they will be acquired by the given date is also required. Appropriate notification will be provided in the bid proposals identifying all locations where acquisition is not complete. (See Appendix 25.151)

Certifications with exception must be followed by a certification without exception when possession of all parcels is obtained.

The Highways and Local Programs Engineer will submit the certification request to the Regional Real Estate Services Manager for the federally mandated certification review. The Region LA Coordinator will visit the local agency and review the acquisition files for the project and determine if the right-of-way was acquired according to the guidelines. For a copy of the coordinators' worksheets and a Federal Aid Requirement Checklist showing the general areas reviewed by the coordinator, see Appendixes 25.152 and 25.153.

If the coordinator determines that the project is ready for certification, they will have the Real Estate Services Manager sign the certification form and return it to Highways and Local Programs for inclusion in the package to be transmitted to Olympia Service Center Highways and Local Programs for final processing. The coordinator will also provide the agency and Regional Highways and Local Programs with a letter detailing the findings of the review and any deficiencies that may have been noted.

If the coordinator determines that the project cannot be certified, a letter will be provided to the agency and the Regional Highways and Local Programs office detailing the deficiencies encountered and the corrective action required before certification can be completed.

25.12 Property Management

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of excess lands and improvements acquired for right-of-way purposes. These procedures shall establish:

- a. Property records showing:
 1. An inventory of all improvements acquired as a part of the right-of-way;
 2. An accounting of excess properties acquired with FHWA funding;
 3. An accounting of the property management expenses and the rental payments received; and
 4. An accounting of the disposition of improvements and the recovery payments received.
- b. Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the control for the physical construction of the project.
- c. The methods for managing the rodent control program.
- d. The methods for employing private firms or public agencies for the management of real property.
- e. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

Should rights-of-way acquired with FHWA funds become excess, they may be disposed of only after FHWA approval. If the disposal is to a private party, the agency must determine fair market value (either through the appraisal process or by public sale), and credit FHWA for its share of the net proceeds of the sale if federal funds participated in acquisition costs. A disposal may be made to a governmental agency for a public use without charge, and no credit to FHWA is required.

Uneconomic remnants acquired by the agency with federal funds but not incorporated into the right-of-way may be disposed of without FHWA approval, but a credit to FHWA is required in the same manner as described earlier in this section.

Disposition of property outside of right-of-way and valued at \$1,000 or less is allowed without credit to federal funds. FHWA will not participate in the local agency costs of the disposal.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established gradeline, lying within the approved right-of-way limits. The airspace may be put to various public and private uses, such as parks, play areas, parking, etc., as long as it is a proper operation and does not impose a safety hazard on the traveling public.

Where an acquiring agency has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval.

If the use of airspace is contemplated, the Region LA Coordinator should be contacted for more detailed policies and procedures that must be considered.

25.13 Document Retention

The acquiring agency shall maintain all records of its right-of-way actions for at least three years after payment of the final voucher to demonstrate compliance with 49 CFR Part 24. In addition, a diary must be maintained wherein each individual involved in a relocation, negotiations, or property management function shall enter and initial a suitable description of each contact and other information concerning that function. Each entry shall clearly show the month, day, and year of the contact; the name of the individual who made such contact; and the name(s) of the individual(s) contacted. Upon request, the Region LA Coordinator will provide explanations and/or counseling as to what are considered adequate records.

25.14 Appendixes

[25.142 Right-of-Way Procedures](#)

[25.143 Right-of-Way Project Funding Estimate Sample](#)

[25.144 True Cost Estimate Sample](#)

[25.145 Appraisal Report Forms \(Sample\)](#)

[25.146 Appraisal Waiver Procedure \(Sample\)](#)

[25.147 Review Appraiser Form \(Sample\)](#)

[25.148 Donation Statements \(Sample\)](#)

[25.149 Certification #1 \(Sample\) — All Right-of-Way Acquired](#)

[25.150 Certification #2 \(Sample\) — Right to Occupy All Right-of-Way Acquired](#)

[25.151 Certification #3 \(Sample\) — All Right-of-Way Not Acquired](#)

[25.152 Coordinators Worksheets \(Sample\)](#)

[25.153 Federal Aid Requirement Checklist](#)

[25.154 Process Flow Chart](#)

[25.155 Governmental Agreement For Aid](#)

AGENCY _____

The _____ (“AGENCY”), desiring to acquire Real Property in accordance with the state Uniform Relocation Assistance and Real Property Acquisition Act (Ch. 8.26 RCW) and state regulations (Ch. 468-100 WAC) and applicable federal regulations hereby adopts the following procedures to implement the above statutes and Washington Administrative Code. The _____ (“Department”) of the AGENCY is responsible for the real property acquisition and relocation activities on projects administered by the AGENCY. To fulfill the above requirements the _____ (“Department”) will acquire right-of-way in accordance with the policies set forth in the Washington State Department of Transportation *Right of Way Manual* (M 26-01) and *Local Agency Guidelines* manual (M 36-6). The AGENCY has the following expertise and personnel capabilities to accomplish these functions:

1. Include the following as they relate to the AGENCY’s request.

- a. List the functions below for which the agency has qualified staff and the responsible position. Attach a list of the individuals on the AGENCY staff who currently fill those positions and a brief summary of their qualifications. This list will need to be updated whenever staffing changes occur. An AGENCY will be approved to acquire based upon staff qualifications.

(1) PROGRAM ADMINISTRATION

Agency Position

(2) APPRAISAL

Agency Position

(3) APPRAISAL REVIEW

Agency Position

(4) ACQUISITION

Agency Position

(5) RELOCATION

Agency Position

(6) PROPERTY MANAGEMENT

Agency Position

- b. Any functions for which the Agency does not have staff will be contracted for with WSDOT, another local agency with approved procedures or an outside contractor. An AGENCY that proposes to use outside contractors for any of the above functions will need to work closely with the WSDOT Local Agency Coordinator and Highways and Local Programs to ensure all requirements are met. When the AGENCY proposes to have a staff person negotiate who is not experienced in negotiation for FHWA funded projects the Coordinator must be given a reasonable opportunity to review all offers and supporting data **before** they are presented to the property owners.

- c. An AGENCY wishing to take advantage of an Appraisal Waiver process on properties valued at \$10,000 or less should make their proposed waiver process a part of these procedures. The process outlined in LAG manual Appendix 25.146 has already been approved. The AGENCY may submit a process different than that shown and it will be reviewed and approved if it provides sufficient information to determine value.
 - d. Attach a copy of the Agency's administrative settlement policy showing the approving authority(s) and the process involved in making administrative settlements.
2. All projects shall be available for review by the FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages and for a three year period following acceptance of the projects by WSDOT.
 3. Approval of the AGENCY's procedures by WSDOT may be rescinded at any time the Agency is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Mayor or Chairman

Date

**WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION**

Approved By:

Real Estate Services

Date

30:P:DP/LAG2C

PFE PARCEL WORKSHEET

PROJECT: _____

OWNERS NAME: _____

PROPERTY LOCATION: _____

BEFORE AREA: _____ AFTER AREA: _____

ACQUISITION AREA

FEE: _____ EASEMENT: _____
(area) (type) (area)

CURRENT USE: _____ ZONING: _____

HIGHEST & BEST USE: _____

EFFECTS OF ACQUISITION: _____

_____SALES RELIED ON : _____ (contained in Data Package for this project
dated _____.

Subject Sold within last 5 Years? _____. If yes, is Sale included in Data package? _____

ACQUISITION COMPENSATION

FEE
LAND:_____
(area) (unit value) \$ __________
(area) (unit value) \$ _____

IMPROVEMENTS:

(type and size) (unit value) \$ __________
(type and size) (unit value) \$ _____EASEMENT: _____
(unit value) \$ _____DAMAGES: _____
\$ __________
\$ _____

TOTAL: \$ _____

Sheet ____ of ____ Sheets

Parcel _____

Plan Approval Date _____ Revision Date _____ Worksheet Date _____

FA #

Date: _____

1	2	3	4	5	6	7	8	9	10	11
Parcel Number	Just Compen (Offer)	Appraisal Fee Costs	Appraisal Review Fee Costs	Negotiation Fee Costs	Title, Escrow Costs	Prop. Mgmt. Service Costs	Relocation Service Costs	Relocation Payments	Condemn. and Incid. Costs	Total Parcel Costs
Total R/W Costs										

S A M P L E
NEIGHBORHOOD DESCRIPTION
FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311

Date: October 21, 1986

The project vicinity is rural Yakima County lying about 40 km (25 miles) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 8 ha (20 acres), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR-13), minimum 1 210 square meters (13,000 square feet) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 1 395 square meters (15,000 square feet) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access points will be controlled at existing locations. The right of way needed is a 6-meter (20-foot) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

Eleven parcels will be affected: seven homes, a tree farm (810 ha (2,000 acres) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.

TRUE COST PARCEL WORKSHEET

Project: _____ Parcel # _____

Notes:

Assessor's Tax Parcel Number(s): _____

Zone Size Min. = _____: Assessed Value Land = _____:

A.V. Bldg.#1 = _____: Bldg.#2 = _____: Bldg.#3 = _____:

Bldg.#4 = _____: Total Property Assessed Value = _____

R/W Map Info:

Before Area = _____: After Area = _____: Fee Take = _____:

Permanent Esmt Take = _____: Temporary Esmt Take = _____

Property Costs:Total Take = (total property A.V. x 1.20) = \$ _____**Or****Or**Partial Take:

Fee Land = _____ @ \$ _____ (A.V. land per unit) x 1.20 = \$ _____

Yard/Site Improvements in Take @ Administrative Lump Sum = \$ _____

Major Building in Take @ (A.V. of Bldg. # _____) x 1.20 = \$ _____

Perm. Esmt. = _____ @ \$ _____ (A.V. land per unit) = \$ _____

Temp. Esmt. = _____ @ \$ _____ (A.V. land per unit) x 10% = \$ _____

TOTAL PROPERTY COSTS (put in column 2 of True Cost) = \$ _____Administrative Costs (put in respective columns of True Cost):

3. Appraisal Fee = _____ 4. Appraisal Review Fee = _____

5. Negotiation Fee = _____ 6. Title and Escrow Fee = _____

7. Prop. Mgmt. Services = _____ 8. Relocation Services = _____

9. Relocation Payments = _____ 10. Condemn & Incidentals = _____

TRUE COST ESTIMATE

FA #

Project: _____

Date: _____

1	2	3	4	5	6	7	8	9	10	11
Parcel Number	Just Compen (Offer)	Appraisal Fee Costs	Appraisal Review Fee Costs	Negotiation Fee Costs	Title, Escrow Costs	Prop. Mgmt. Service Costs	Relocation Service Costs	Relocation Payments	Condemn. and Incid. Costs	Total Parcel Costs
Total R/W Costs										

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ACQUISITION APPRAISAL REPORT

1. OWNER:
2. LOCATION OF SUBJECT:
3. SUBJECT LEGAL DESCRIPTION:
4. DELINEATION OF TITLE (5 years):
5. DESCRIPTION OF SUBJECT PROPERTY including Neighborhood, Larger Parcel, Zoning, Present Use, Improvements, Highest and Best Use-Vacant and Improved:
6. PROPERTY RIGHTS TO BE ACQUIRED AND EFFECTS OF ACQUISITION / PROJECT:
7. VALUATION-BEFORE
 - A. Land as Though Vacant
 - (1) Scope of Data Search
 - (2) Comparative Analyses
 - (3) Correlation and Conclusion-Land Value Before
 - B. Whole Property
 - (1) Scope of Data Search
 - (2) Comparative Analyses
 - (3) Correlation and Conclusion-Property Value Before
8. DESCRIPTION OF SUBJECT REMAINDER:
9. VALUATION-AFTER:
 - A. Land as Though Vacant
 - (1) Scope of Data Search
 - (2) Comparative Analyses
 - (3) Correlation and Conclusion-Land Value After
 - B. Whole Property
 - (1) Scope of Data Search
 - (2) Comparative Analyses
 - (3) Correlation and Conclusion-Property Value After
10. EXPLANATION, MEASUREMENT, AND ALLOCATION OF DAMAGES / SPECIAL BENEFITS:
11. REPORT OF CONTACT WITH OWNER:

Person(s) Contacted Address: Phone: Comments:	Date of Contact: Relationship to Owner: Date of Joint Inspection:
--	---

Appraiser:

Page

Parcel:

**Washington State
Department of Transportation**

Parcel No.:
Federal Aid No.:
Project:
Map Sheet of Sheets
Map Approval Date:
Date of Last Map Revision:

CERTIFICATE OF APPRAISER

I certify that, to the best of my knowledge and belief:

- ◆ the statements of fact contained in this appraisal are true and correct;
- ◆ the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conclusions, and are my personal, unbiased professional analyses, opinions, and conclusions;
- ◆ I have no present or prospective interest in the property that is the subject of this appraisal, and I have no personal interest or bias with respect to the parties involved;
- ◆ my compensation is not contingent upon the reporting of a predetermined value or direction that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event;
- ◆ my analyses, opinions, and conclusions were developed, and this appraisal has been prepared, in conformity with the appropriate State and Federal laws, regulations, policies and procedures applicable to the appraisal of right of way for such purposes;
- ◆ I have made a personal inspection of the property that is the subject of this report. I have made a personal inspection of the comparable sales contained in the report addenda;
- ◆ I have afforded the owner or a designated representative of the property that is the subject of this appraisal the opportunity to accompany me on the inspection of the property.
- ◆ no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated);
- ◆ I have disregarded any increase in Fair Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation. I have disregarded any decrease in Fair Market Value caused by the proposed public improvement or its likelihood prior to the date of valuation, except physical deterioration within the reasonable control of the owner;

The property has been appraised for its fair market value as though owned in fee simple, or as encumbered only by the existing easements as described in the title report dated _____.

The opinion of value expressed below is the result of, and is subject to the data and conditions described in detail in this report of _____ pages.

I made a personal inspection of the property that is the subject of this report on _____.

The **Date of Value** for the property that is the subject of this appraisal is _____. Per the FAIR MARKET VALUE definition contained in the Acquisition Appraisal Salient Information, the value conclusions for the property that is the subject of this appraisal are on a cash basis and are:

FAIR MARKET VALUE BEFORE ACQUISITION \$ _____

FAIR MARKET VALUE AFTER ACQUISITION \$ _____

DIFFERENCE \$ _____

Date of Assignment or Contract: _____ Name: _____

Date Signed: _____ Signature: _____

Washington State-certified general real estate appraiser certification number: _____

CERTIF1

DO NOT WRITE BELOW THIS LINE

Headquarters Service Center Date Stamp

Region Date Stamp

CERTIF1

WAIVER OF APPRAISAL

The (Agency) desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives and desiring to take advantage of the \$10,000.00 appraisal waiver process approved by the Federal Highway Administration for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation as follows:

Rules

- A. The (Agency) may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the PFE (Project Funding Estimate) is \$10,000.00 or less including cost-to cure items.
- B. The Agency must make the property owner(s) aware that an appraisal has not been done on the property and that one will be completed if they desire.
- C. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
- B. The AOS is submitted to (position Title Only) for approval.
- C. (position Title Only) signs the AOS authorizing a first offer to the property owner(s).

APPROVED:

(Agency)

By:

Real Estate Services
Washington State Department
of Transportation

Project Funding Estimate

Rules

- A A Project Funding Estimate (PFE) is prepared for every project where Right of Way will be acquired.
- B. As a minimum, the PFE contains the following information.
 - 1. A parcel-by-parcel list of right of way costs reported on the Right of Way Estimate (WSDOT form 261-006).
 - 2. A total project right of way cost summary reported on the Right of Way Project Cost Breakdown and Summary (WSDOT Form 261-006A).
 - 3. A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost to cure documentation, and Assumptions and Limiting Conditions. Note: The PFE Parcel Worksheet is not a part of the data package.

Procedures

The Agent assigned to do the PFE completes the estimate as follows:

- A. Inspect the project and become familiar with the engineering features of the plan.
- B. View individual parcels to determine the effects of acquisition.
- C. Prepare a Neighborhood and Project Description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.
- D. Gather sufficient comparable land sales and listings for the various types of parcels and remainders within the project. All sales shall be inspected, photos taken and written up on Market Data (WSDOT Form 261-020) sheets. (If the sales are to be used exclusively on parcels where the Agency has determined to waive the appraisal, the sales need not be confirmed. In all other cases, a reasonable effort shall be made to confirm all sales. Unconfirmed sales will contain an explanation of the confirmation effort along with names and phone numbers of uncontracted parties.)

- E. Prepares project and sales vicinity map.
- F. Prepares PFE Parcel Worksheet for each parcel on the project.
- G. Includes any applicable damage studies.
- H. Includes cost-to-cure documentation for estimates and/or bids.
- I. Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

ADMINISTRATIVE OFFER SUMMARY

PROJECT: _____

OWNERS NAME: _____

PROPERTY LOCATION: _____

BEFORE AREA: _____ AFTER AREA: _____

ACQUISITION AREA

FEE: _____ EASEMENT: _____
(area) (type) (area)

CURRENT USE: _____ ZONING: _____

HIGHEST & BEST USE: _____

EFFECTS OF ACQUISITION: _____

SALES RELIED ON : _____ (contained in Data Package for this project
dated _____.)

ACQUISITION COMPENSATION

FEE
LAND:

_____ \$ _____
(area) (unit value)

IMPROVEMENTS:

_____ \$ _____
(type and size) (unit value)

_____ \$ _____

EASEMENT: _____ \$ _____
(unit value)

DAMAGES: _____ \$ _____

TOTAL: _____ \$ _____

Sheet ____ of ____ Sheets

Parcel _____

Plan Approval Date _____ Revision Date _____ Worksheet Date _____

Prepared By: _____ Date: _____

I concur in the value estimate herein and authorize an Administrative Offer be made in said amount.

(Region RES Manager) (Date)

This form is prepared in conformance with WSDOT policy and procedures. It does not constitute an appraisal as defined by the USPAP.

Federal Aid # _____

Parcel # _____



Washington State
Department of Transportation

REVIEW APPRAISER'S CERTIFICATE NO. 1

FROM: _____, Review Appraiser

TO:

Agency:

Parcel No.:

Owner:

Federal Aid No.

Project:

Map Sheet:

Map Approval Date:

Date of last map revision:

The following appraisals have been made on subject property:

APPAISER	VALUATION DATE	BEFORE VALUE	AFTER VALUE	VALUE DIFFERENCE	ALLOCATION \$	
		\$	\$	\$	TAKING \$	DAMAGES \$
1.						

The following prior certificate(s) of value have been made on subject property:

REVIEW APPRAISER	DATE OF PRIOR DV	BEFORE VALUE	AFTER VALUE	JUST COMPENSATION	ALLOCATION \$	
		\$	\$	\$	TAKING \$	DAMAGES \$
1.						

Comments:

The appraiser completed a narrative appraisal report as contracted. The data used is adequate and relevant and any adjustments made to the data are proper. The appraisal methods and techniques used are appropriate. The analyses, opinions and value conclusions in the report under review are appropriate and reasonable.

I, the review appraiser, have both the experience and the knowledge to perform this appraisal review competently. Attached are my Appraisal Review Assumptions and Limiting Conditions and my Appraisal Review Salient Information which are made a part of this appraisal review report.

I inspected the subject property and the sales data used in the appraisal report on _____.

My value conclusions and appraisal review findings are as follows:

REVIEWER'S DETERMINATION OF VALUE (This Review):	Reviewer's Allocation of Just Compensation:
VALUE BEFORE ACQUISITION: \$	Acquisition: \$
VALUE AFTER ACQUISITION: \$	Damages: \$
VALUE DIFFERENCE: \$	

JUST COMPENSATION IS \$ AS OF

CERTIFICATE OF REVIEW APPRAISER

I, the review appraiser, certify that, to the best of my knowledge and belief:

1. The facts and data reported by the review appraiser and used in the review process are true and correct.
2. The analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.
5. My analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the appropriate State laws, regulations, procedures and policies applicable to appraisal of right-of-way for such purposes.
6. I did personally inspect the subject property of the report under review.
7. No one provided significant professional assistance to the person signing this review report.

I further certify that if this determination is to be used in conjunction with a Federal aid highway project or other Federally funded project, none of the approved just compensation is ineligible for Federal reimbursement.

Washington State-certified general
real estate appraiser certificate
number:

Signature: _____

_____, Review Appraiser,

Date:

ACQUIRING AGENCY CONCURRENCE AND AUTHORIZATION:

The _____ of _____ does hereby indicate
the concurrence with the above certification and does authorize further action by
_____ to proceed according to established procedures with the
acquisition of the designated property.

_____(Date) _____.

Proposed Donation Letter

Date

Subject: Project Title
 Parcel Number

Sirs:

(My/Our) donation of (parcel number or property description) to the (name of local agency) for highway/transportation purposes is made voluntary and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/We) hereby release the (name of local agency) from obtaining an appraisal of the acquired property.

Sincerely,

Proposed Donation Letters (Through Local Agency)

Date _____

Regional Administrator/
Chief Right-of-Way Agent
Washington State Department of Transportation
Transportation Building
Olympia, WA 98504

Subject: (Project Title)
(Federal Aid Number)
Parcel Number _____

Sirs:

The attached instrument for donation of right-of-way to the agency is in compliance with the provisions of
* _____.

Sincerely,

Concur and Approve

Accept and Approval

Title _____

STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION

(Local Agency)

*(Typical language.)

...City/County Commission Resolution No. 111.

...City/County Ordinance No. 111.

...City/County Conditional Use Permit No. 111.

...City/County Building Permit No. 111.

(For use when a local agency project is adjacent to WSDOT right-of-way and WSDOT does not have an active project at this location.)

All Right-of-Way Acquired

RIGHT-OF-WAY CERTIFICATE #1	
TO: _____ Regional Highways and Local Programs Engineer _____ _____	Date: _____ RE: Federal Aid No.: _____ Project Title: _____ _____ Local Agency: _____
Dear Sir: <div style="margin-left: 100px;"> As per title 23 CFR, Part 635, Section 309, Para (c), right of way has been acquired in accordance with current FHWA Directives covering the acquisition of real property and the following applies: </div> <p>I hereby certify that all necessary rights-of-way, including control of access rights (when pertinent), have been acquired including legal and physical possession.</p> <p style="text-align: center;">AND</p> <p><i>(select (a) or (b))</i></p> <p>(a) There are no improvements to be removed or demolished for the above cited project.</p> <p style="text-align: center;">OR</p> <p>(b) All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.</p> <p style="text-align: center;">AND</p> <p><i>(select (a) or (b))</i></p> <p>(a) I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA directives covering the relocation of displacees to DS&S housing and availability of adequate replacement housing are not applicable to this project.</p> <p style="text-align: center;">OR</p> <p>(b) I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.</p> <p>Project Description:</p> <p>Total parcels required for project: _____</p> <p>Parcel(s) with Relocation: _____</p> <p>Temporary Construction Permits: _____</p> <p>Sincerely,</p> <div style="display: flex; justify-content: space-between; margin-top: 40px;"> <div style="width: 45%;"> _____ Chief Administrative Officer of Local Agency or Delegated Authority </div> <div style="width: 45%;"> _____ Manager, Real Estate Services _____ Region </div> </div>	

Right to Occupy All Right-of-Way Acquired (Some P&U's or Rights of Entry)

RIGHT-OF-WAY CERTIFICATE #2

TO: _____ Date: _____
 Regional Highways and Local Programs Engineer _____

 RE: Federal Aid No.: _____
 Project Title: _____
 Local Agency: _____

Dear Sir:

As per title 23 CFR, Part 635, Section 309, Para (c), right-of-way has been acquired in accordance with current FHWA Directives covering the acquisition of real property and the following applies:

I hereby certify that although all necessary rights of way have not been acquired, the right to occupy and use all rights of way required for the proper execution of the project have been acquired.

AND

(select (a) or (b))

- (a) There are no improvements to be removed or demolished for the above cited project.

OR

- (b) All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.

AND

(select (a) or (b))

- (a) I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA directives covering the relocation of displacees to DS&S housing and availability of adequate replacement housing are not applicable to this project.

OR

- (b) I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.

Sample #2 Certification (continued)

Project Description:

Total parcels required for project: _____

a. Parcel(s) acquired: _____

b. Parcel(s) with possession and use only: _____

List:

P&U Parcel #

Owner

Effective Date

1.

2.

c. Parcels covered by right(s) of entry: _____

List:

R/E Parcel #

Owner

Effective Date

Termination Date

1.

2.

d. Temporary construction permit(s) acquired: _____

e. Parcel(s) with Relocation: _____

Sincerely,

Chief Administrative Officer of
Local Agency or Delegated Authority

Manager, Real Estate Services
_____ Region

All Right-of-Way Not Acquired (Use Only in Very Unusual Circumstances)

RIGHT-OF-WAY CERTIFICATE #3

TO: _____ Date: _____
Regional Highways and Local Programs Engineer

RE: Federal Aid No.: _____
Project Title: _____
Local Agency: _____

Dear Sir:

As per title 23 CFR, Part 635, Section 309, Para (c), right-of-way has been acquired in accordance with current FHWA Directives covering the acquisition of real property and the following applies:

I hereby certify that the acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204.

AND

(select (a), (b), or (c))

- (a) There are no improvements to be removed or demolished for the above cited project.

OR

- (b) All occupants have vacated the lands and improvements and the agency has physical possession and the right to remove, salvage, or demolish these improvements and enter upon all lands.

OR

- (c) Occupants remain to be vacated and the agency ensures that occupants who remain in the right-of-way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

AND

(select (a), (b), or (c))

- (a) I further certify that there were no individuals or families displaced by the above cited project. Therefore, the provisions of current FHWA Directives covering the relocation of displacees to DS&S housing and availability of adequate replacement housing are not applicable to this project.

OR

- (b) I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented. All eligible persons and occupants of the right-of-way within this project have been relocated to decent, safe and sanitary housing or have been offered decent, safe and sanitary housing.

OR

- (c) I further certify that our previously submitted assurances of an adequate relocation assistance program and real property acquisition policies have been fully implemented **except** for a few remaining parcels as explained in the exception section.

Sample #3 Certification (continued)

Project Description:

Total parcels required for project: _____

a. Parcel(s) acquired: _____

b. Parcel(s) with possession and use only: _____

List:

P&U Parcel #

Owner

Effective Date

1.

2.

c. Parcels covered by right(s) of entry: _____

List:

R/E Parcel #

Owner

Effective Date

Termination Date

1.

2.

d. Temporary construction permit(s) acquired: _____

e. Parcel(s) with Relocation: _____

Exceptions:

(List all exceptions by parcel number. A realistic date of occupancy of the parcel and of completion of relocation must be given with an explanation of why those dates are realistic. Explain also, why it is in the public interest that the project be advertised without acquisition being completed.)

I further certify that appropriate notification will be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.

Sincerely,

Chief Administrative Officer of
Local Agency or Delegated Authority

Manager, Real Estate Services
_____ Region

PROJECT WORK SHEET

AGENCY: _____ **F.A. NUMBER:** _____

PROJECT TITLE: _____

PROCEDURES DATED: _____

NUMBER OF PARCELS: _____

RELOCATION PLAN DATED : **POSITIVE:** _____ **NEGATIVE :** _____

PROJECT FUNDING ESTIMATE DATED: _____

FHWA PARTICIPATION IN R/W: _____ **ACQ. AUTHORIZATION DATED** _____

RIGHT OF WAY PLAN:

F.A. NUMBER: _____ **OWNERSHIP INFORMATION:** _____

AREAS BEFORE: _____ **AFTER:** _____ **R/W:** _____

ADEQUATE DATA FOR LEGAL: _____

COMMENTS:

PARCEL WORK SHEET

PROJECT TITLE:

PARCEL NUMBER:

ACREAGE:

APPRAISAL - DATED _____
AMOUNT _____
FIRM _____

REVIEW - DATED _____
AMOUNT _____

JC SET BY AGENCY - DATED _____
AMOUNT _____

OFFER LETTER- DATED _____
AMOUNT _____

ADMN. SETTLEMENT AMOUNT _____

AGENCY APPROVED _____

TOTAL SETTLEMENT AMOUNT _____

UNECONOMIC REMNANT _____ VALUE _____ OFFER MADE _____

DONATION: STATEMENT SIGNED _____

TITLE REPORT _____

ENCUMBRANCES CLEARED _____

DEED DATED _____

RECORDED _____

DOCUMENTS 1. LEGAL DESCRIPTION _____
 2. PARTIES _____
 3. NOTARY _____

PROOF OF PAYMENT _____

NEGOTIATOR DISCLAIMER _____

DIARY COMPLETE _____

SIGNED _____

RELOCATION

ADDITIONAL COMMENTS

REVIEWER:

DATE:

The following is a list of items needed in an Agency's files to allow the LPA coordinator to complete a project certification review. This list is not all inclusive and is meant as an aid to file preparation only.

PROJECT FILE

1. RIGHT OF WAY PLAN
2. PROJECT FUNDING ESTIMATE
3. RELOCATION PLAN
4. FHWA ACQUISITION AUTHORIZATION
5. CONDEMNATION AUTHORIZATION (IF NEEDED)

NEGOTIATION FILE

1. APPRAISAL(S)
2. APPRAISAL REVIEW(S)
3. JUST COMPENSATION (SET BY AGENCY)
4. DIARY(S)
5. OFFER LETTER(S)
6. ADMINISTRATIVE SETTLEMENT JUSTIFICATION AND APPROVAL
7. DONATION STATEMENT (IF APPLICABLE)
8. TITLE EVIDENCE
9. COPIES OF RECORDED DOCUMENTS
10. PROOF OF PAYMENT(S)
11. NEGOTIATOR DISCLAIMER STATEMENT
12. CONSULTANT CONTRACT(S)
13. CORRESPONDENCE

RELOCATION FILE

1. DIARY(S)
2. PROPER NOTICE(S):
 - GENERAL INFORMATION
 - RELOCATION ELIGIBILITY
 - 90 DAY NOTICE

RESIDENTIAL:

3. RELOCATION BENEFITS COMPUTATION
4. BENEFITS NOTICE
5. MOVING AGREEMENT
6. PROOF OF PURCHASE OR RENT
7. DS&S INSPECTION REPORT
8. EVIDENCE OF ADVISORY ASSISTANCE
9. ALL SUPPORTING DOCUMENTATION

BUSINESS:

10. BENEFITS NOTICE
11. MOVING AGREEMENT
12. CLAIM FORMS
13. EVIDENCE OF ADVISORY ASSISTANCE
14. ALL SUPPORTING DOCUMENTATION
15. PROOF OF PAYMENT(S)

Agency _____ Region _____ Date _____

Federal Funds Will Be Used For: PE _____ R/W _____ CONST. _____

Right-of-Way Acquired For This Project: YES _____ NO _____

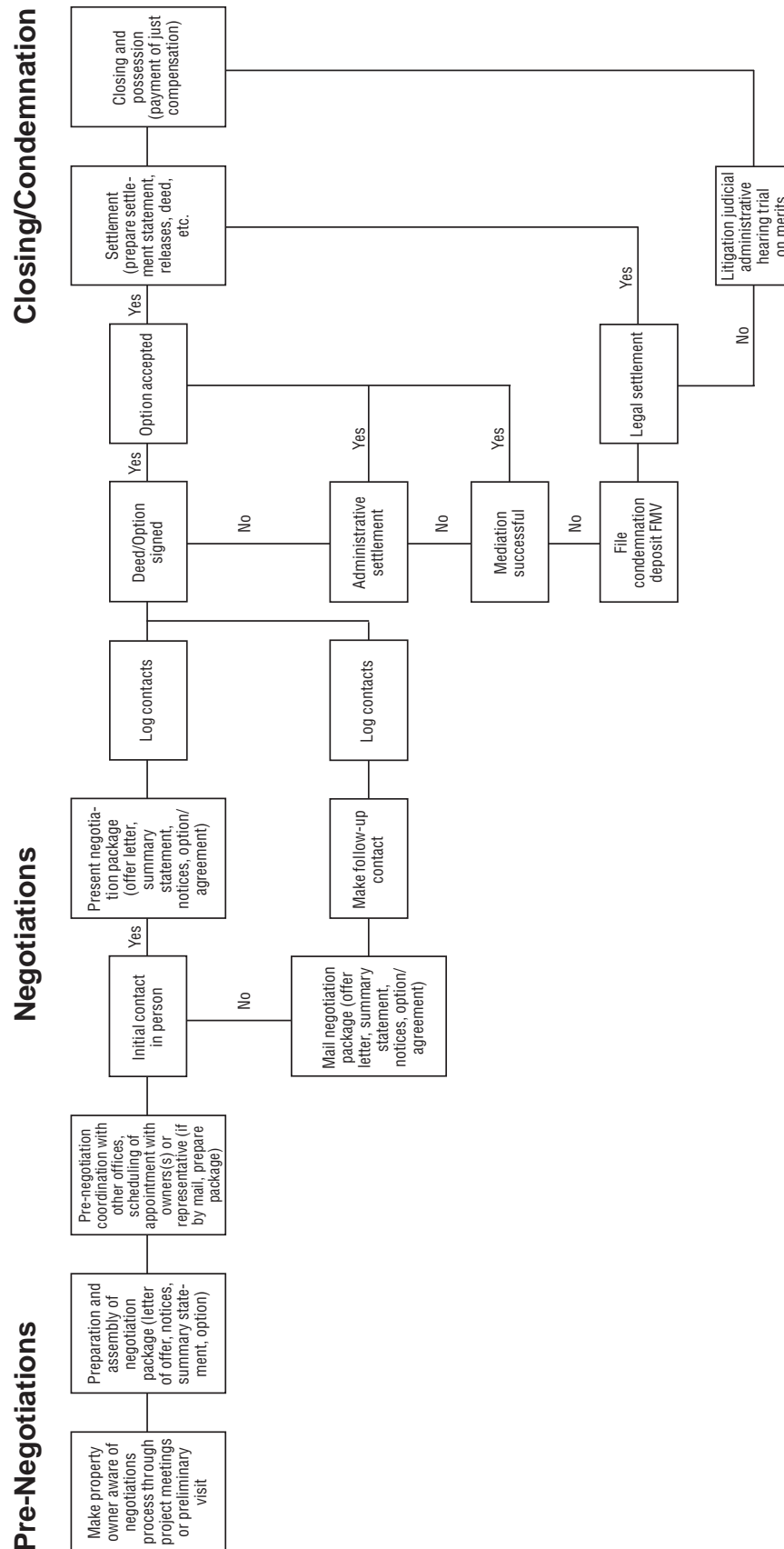
Local Agency Guidelines
July 1999

(Reminders)	(Comments)
10. The rental amount charged to owners and/or tenants permitted to occupy the property subsequent to acquisition must not exceed the fair rental value for such occupancy, per 49 CFR 24.102(m).	10.
11. No action must be taken to advance condemnation, defer negotiations or condemnation or taken any other action coercive in nature in order to compel an agreement on the price to be paid for the property, per 49 CFR 24.102(h).	11.
12. The acquiring agency must acquire an equal interest in all buildings, etc., located upon the real property acquired, per 49 CFR 24.105.	12.
13. The acquiring agency must pay recording fees, transfer taxes, etc.; penalty costs for pre-payment of a pre-existing mortgage and the pro rata share of real property taxes paid subsequent to vesting title in the acquiring agency, per 49 CFR 24.106.	13.
14. No property owner can voluntarily donate his property prior to being informed of his right to receive just compensation.	14.
15. Provisions have been made for rodent control should it be necessary.	15.
16. No owner was intentionally required to institute legal proceedings to prove the fact of the taking of his real property.	16.

Prepared by _____

Title _____

Acquisition Process





**Washington State
Department of Transportation**

<p align="center">Government Agreement For Aid</p> <p align="center">Work by State - Actual Cost</p>	<p>Organization and Address</p>
<p>Agreement Number</p>	<p>Federal Employers I.D. Number</p>
<p>Region</p>	<p align="center">Land Acquisition, Relocation, and Related Services</p>

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter the "DEPARTMENT" and the above named organization, hereinafter the "AGENCY".

WHEREAS, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646, 84 Stat. 1894) amended by Uniform Relocation Act Amendments of 1987 (PL 100-17, 101 Stat. 246-256) as implemented by the United States Department of Transportation (49 CFR 24), Chapter 8.26 Revised Code of Washington (RCW), and Chapter 468-100 Washington Administrative Code (WAC) promulgated by Washington State Office of Community Development (OCD), all of which are hereinafter referred to as the REGULATIONS, establish a uniform policy for the expedient and consistent treatment of owners subjected to land acquisition practices and provide for the fair and equitable treatment of persons displaced in connection with or as a result of public works programs or projects of a State agency or local public body; and

WHEREAS, the AGENCY may propose to acquire or to administer the acquisition of real property in connection with public works programs or projects which may necessitate displacement of an individual, a family, business, farm, or nonprofit organization; and

WHEREAS, the DEPARTMENT has an established organization to complete project impact studies and to conduct land acquisition, property management, and relocation assistance programs in compliance with the **REGULATIONS** and is empowered to provide such services to other governmental agencies pursuant to Chapter 39.34 RCW; and

WHEREAS, the DEPARTMENT, in accordance with its policies does not desire to perform services for a public agency by entering into or otherwise interfering with competitive bidding by private enterprise in response to advertisement or solicitation by such public agency; and

WHEREAS, the AGENCY, in support of said departmental policies, assures the DEPARTMENT that the AGENCY's assignments and/or requests for services under this AGREEMENT will not result from bidding, negotiation, or other competition involving private enterprise; and

WHEREAS, the AGENCY may desire to obtain such services from the DEPARTMENT and the DEPARTMENT is willing to furnish such services to the AGENCY, and both deem it in the interest of the public to enter into this AGREEMENT;

NOW, THEREFORE, in consideration of the stated premise and in the interest of providing expedient, fair, equitable, and uniform treatment of land owners and persons to be displaced by proposed land acquisition projects and pursuant to RCW 8.26.120, the parties hereto agree as follows:

I GENERAL

A. The DEPARTMENT shall, to its maximum ability, provide the AGENCY with impact study, appraisal, appraisal review, acquisition, relocation assistance, or property management services described hereinafter, all in accordance with the appropriate elements of the department's operating requirements set forth in the departmental publication M26-01 (HW), Right of Way Manual, except where specific operating requirements are otherwise described herein. All such requirements shall conform to the REGULATIONS.

B. The normal workload of the department shall have priority over any work performed under the AGREEMENT. The work performed under this AGREEMENT shall be pursued with care and diligence, making every effort to recognize pertinent schedules of the AGENCY. The DEPARTMENT shall promptly notify the AGENCY of any hardship or other inability to perform under this AGREEMENT including postponement of the agency's work due to priority given to the department's work.

C. This AGREEMENT may be increased or decreased in scope or character of work to be performed if such change becomes necessary, but any such change shall be accomplished by written supplement executed by all parties to said AGREEMENT.

D. The AGENCY shall indemnify and hold the DEPARTMENT and its agents, employees, and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the DEPARTMENT arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the AGENCY performance or failure to perform any aspect of this AGREEMENT to the extent allowed by law.

II WORK ASSIGNMENT/REQUEST

A. Specific assignments shall be made in writing to the DEPARTMENT by the AGENCY. The AGENCY shall make such assignments before any negotiations for property acquisition and before any discussion of price with the property owner, when required by the REGULATIONS.

B. The AGENCY shall furnish the DEPARTMENT with all information which has been compiled by or is available to the AGENCY concerning the property to be affected by each particular project. Such information shall include, but not be limited to, a list identifying each property affected by the project by parcel number, a tabulation of improvements on each property, the geographical location and boundaries of each property, and a description of how the project affects each property. The AGENCY shall furnish the DEPARTMENT copies of plan sheets showing limits of parcels, rights to be acquired, and sufficient engineering data to develop legal descriptions.

C. The DEPARTMENT shall furnish all labor, materials, supplies, and incidentals necessary to complete the work assigned by the AGENCY and shall furnish all information necessary to the conduct of a land acquisition program.

D. The DEPARTMENT will at its discretion and upon written request from the AGENCY furnish the following as required:

Impact Studies: Impact studies shall be made and reported in written narrative addressing potential influences by a program or project on land economics or land use factors, displacement/relocation factors, acquisition costs, and relocation plans, as requested.

Appraisal: Property shall be evaluated and value conclusions reported to conform with departmental operating requirements. Any request by the AGENCY for court preparation and testimony will be a separate work assignment request under this AGREEMENT and shall be submitted to the DEPARTMENT in a timely manner to provide not less than ninety (90) days notice in advance of any expected court appearance.

Appraisal Review: Appraisal reports shall be reviewed to conform with departmental operating requirements for validity of value conclusions provided such reports are accompanied by a copy of the appraiser's contract and provided that the AGENCY (or its agent) has determined that such reports appear to comply with the agency's procedural requirements and include adequate description of the property appraised and the interest to be acquired and appear to include adequate data supporting said conclusions. The AGENCY shall be responsible for obtaining any necessary replacements for unacceptable appraisal reports or for obtaining any substantive revisions of inadequate reports where such reports were furnished to the DEPARTMENT by the AGENCY.

Acquisition: Every reasonable effort will be made to acquire real property by negotiations in accordance with the REGULATIONS. The DEPARTMENT shall attempt to acquire all property within the project limits without commencing condemnation proceedings. A written offer will be presented to each owner at the time price is first discussed for the property. The offer will be documented and retained as part of the parcel file. Individual parcel diaries will be maintained containing adequate written records of the negotiations including, but not limited to, the following:

1. Date and place of contacts;
2. Persons present;
3. Offers made (actual dollar amount);
4. Counter offers made;
5. Reasons settlement could not be reached (if appropriate).

Each request by the AGENCY shall specify the name of the grantee in whose name the property is to be conveyed. The DEPARTMENT shall provide the AGENCY with deeds to all property acquired and, wherever possible, instruments to clear encumbrances of title from those deeds. The DEPARTMENT will provide information leading to clearing of encumbrances which the DEPARTMENT cannot clear without legal action. Upon completion of a review of each acquisition by the DEPARTMENT's Title Section, all instruments and materials pertaining thereto will be provided to the AGENCY. Clearing remaining encumbrances of title and making the actual payment for the property shall be the responsibility of the AGENCY. Should it become apparent that negotiations for attempted acquisition have reached an impasse and sufficient time has elapsed for a property owner to make a decision, the DEPARTMENT will, either at its discretion or upon written request by the AGENCY, submit to the AGENCY a condemnation report that will contain a summary of negotiations, amounts of counter offers, if any, and other historic data relative to such attempted acquisition. The actual filing of condemnation and subsequent litigation shall be the responsibility of the AGENCY.

Relocation Assistance: Relocation assistance services shall be provided to conform with departmental operating requirements. All relocation claims presented by displacees will be processed by the DEPARTMENT, but the actual disbursement of monies shall be made by the AGENCY. As may be assigned by the AGENCY, the DEPARTMENT will respond to and assist the AGENCY with an appeal as to relocation assistance benefits filed by an aggrieved displacee; however, the AGENCY shall remain responsible for any appointment of a hearings officer, conducting hearings, maintaining records thereof, and rendering of the final decision of the AGENCY.

Property Management: Effective management of agency controlled properties will be provided in the name of the AGENCY in conformity with departmental operating requirements.

E. At the completion of the project the DEPARTMENT will, either at its discretion or upon written request by the AGENCY, turn over to the AGENCY all records including appraisal and appraisal review reports, acquisition, relocation assistance, and property management records pertinent to the work performed by the DEPARTMENT.

III PAYMENT

The DEPARTMENT shall be paid by the AGENCY for completed work and for services rendered under the AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, and incidentals necessary to complete the work. The DEPARTMENT acknowledges and agrees that only those costs actually allocable to a project shall be charged to such project.

A. The DEPARTMENT shall be reimbursed in full by the AGENCY for its direct and related indirect costs accumulated in accordance with its current accounting procedures.

B. Partial payments will be made by the AGENCY upon receipt of the AGENCY of billings from the DEPARTMENT. Billings will not be more frequent than one per month. It is agreed that payment of any particular claim will not constitute agreement as to the appropriateness of any item and that at the time of final billing all required adjustments will be made.

C. Upon termination of this AGREEMENT as provided in Section VI, the DEPARTMENT shall be paid by the AGENCY for services rendered to the effective date of termination less all payments previously made. No payment shall be made by the AGENCY for any expense incurred or work done following the effective date of termination unless authorized, in writing, by the AGENCY.

D. Final payment of any balance due the DEPARTMENT of the ultimate gross reimbursable amount, prior to the effective date of termination, will be made upon ascertainment of such balance by the DEPARTMENT and certification thereof to the AGENCY.

IV NONDISCRIMINATION

The DEPARTMENT shall comply with RCW Chapter 49.60 and with Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq. With respect to the work to be performed by the DEPARTMENT during the contract, the DEPARTMENT shall not discriminate on the grounds of race, color, sex, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap in the selection and retention of agents, subcontractors or in the procurement of services or materials, leases, or equipment.

V VENUE

In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

**VI
COMMENCEMENT AND TERMINATION OF
AGREEMENT**

The work is of a continuing nature and will be in force as of the date of this AGREEMENT. Either party may terminate this AGREEMENT at any time upon not less than sixty (60) days written notice to the other party with or without cause. The AGREEMENT shall terminate three years from the date of execution hereof unless otherwise terminated or unless extended in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date first above written.

AGENCY

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

By _____

By _____

Title _____

Title _____

DOT Form 224-075 EF
Revised 12/98

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent National goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to ensure equal opportunity in transportation contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT's DBE Plan, or develop an equivalent plan. The local agency equivalent plan must have the approval of WSDOT's Office of Equal Opportunity and the Federal Highway Administration (FHWA).

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their Federally-assisted contracts are administered in accordance with the State's approved DBE Program Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with the Operations Engineer for Highways and Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of Federal funds and/or CA status). A finding of noncompliance will result for failure to comply with the requirements of WSDOT's DBE Plan.

Each Federally-assisted contract/subcontract must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

26.2 Procedures

- a. **Local Agency DBE Liaison Officer.** The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility

to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.

- b. **DBE Firm(s) Certification.** The Washington State Office of Minority and Women's Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. Only DBE firms that are currently certified by OMWBE may be used by prospective bidders on Federally funded projects. A directory of certified DBE firms is maintained and published by OMWBE. A copy of the directory is available via WSDOT's web page or directly from OMWBE. Their address is:

Office of Minority and Women Business Enterprise
406 South Water
Olympia, WA 98504
Telephone: (360) 753-9693

- c. **Establishment of Project DBE Goals.** The Highways and Local Programs Operations Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer's estimate with their suggested DBE goal to the Regional Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project.

If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project is considered a federal aid project for DBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve the overall goal:

- Voluntary Goal
- Mandatory Goal
- Zero Goal

The Highways and Local Programs Operations Engineer will then establish a voluntary or mandatory DBE goal for the project. The methodology employed by WSDOT and its Highways and Local Programs Service Center in determining state and local agency project contract goals is as follows:

A. Elements

1. Geographical location of the project;
2. Type(s) of work included in the project, i.e., structure, roadway, new construction;
3. Availability of DBEs to perform the type(s) of work;
4. Potential subcontractable items of the work; and
5. Total dollar value of the contract.

The attainment accomplished through this analysis will be reviewed annually to determine the appropriateness of the method of setting goals.

B. Goal Setting Process

1. Review the department's overall DBE goal and the means to meet the goal (Refer to WSDOT's DBE Plan: XVIII, Overall DBE Goals and XXIII, Means to Meet the Overall DBE Goal);
2. If the contract includes federal funds, a DBE goal is considered;
3. If the contract amount is under \$100,000.00 then no goal is set. (However, if the work is such that the prime contractor has a distinctly separate class of work available, and meets the requirement for the prime to do 30% of the work, a goal may be considered);
4. The bid items are sorted by pre-qualification work classes and the total estimated dollar amounts to help identify opportunities for subcontracting;
5. Prime contractor work is assumed to be one class (the largest) unless two classes are needed to total a minimum of 30% of the total contract;
6. Mobilization nor specialty work is considered for subcontracting;
7. The remaining work is totaled, both as a percentage and a dollar amount. It is then divided by two (2). (50 percent of the total identified subcontractable items would be available for DBE firms, while the other 50 percent would be available for non-DBE firms); and
8. Ensure that DBE firms are ready, willing, and able to perform the work at the geographic location and time of the project.

If a local agency feels the project goal set by the Highways and Local Programs Operations Engineer is inappropriate, they may submit a request to have it changed. This request must be accompanied by justification based on the above criteria for establishing the contract goal.

d. **DBE Provisions in the Plans, Specifications, and Estimate (PS&E).**

After the goal has been determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set as outlined above shall be included in the PS&E. These GSPs are available on the WSDOT website or from the Regional Local Programs Engineer. Only the WSDOT GSPs are approved for use on an FHWA funded project.

To complete the DBE requirements in the PS&E, when a mandatory goal is established, Form 272-056A, "Disadvantaged Business Enterprise Utilization Certification," will be included. This form shall be in the proposal given to each bidder. This form is available from the Regional Local Programs Engineer. When a voluntary or zero goal is established the DBE utilization form is not required.

- e. **Bid Opening.** Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the form "Disadvantaged Business Enterprise Utilization Certification" completed by the contractor.

Failure to complete this form will be considered as evidence that the proposal is unresponsive and, therefore, is not eligible for award.

- f. **Is the DBE Firm Certified by OMWBE?** The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on an FHWA funded project. (See b, above.) To verify whether a firm is certified as a DBE and eligible to perform work on an FHWA funded project, you must call OMWBE at (360)753-9693. To meet the goals for the project, DBE firms not certified at the time fixed for the bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor, in the project.

g. **Selection of the Successful Bidder**

A. Selection of Successful Bidder (When a mandatory goal is established.)

1. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the DBE goal. The bidder can meet this requirement in either two ways:
 - a. The bidder can meet the established DBE goal, documenting commitments for participation by DBE firms sufficient for this purpose; or
 - b. If the bidder does not meet the established DBE goal, the bidder can document its adequate good faith efforts.

This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully successful in meeting the established DBE goal. Mere pro forma efforts are not considered “good faith efforts” to meet the DBE contract requirements.

2. Should the low and otherwise responsive bidder fail to attain the goal and provide adequate good faith effort documentation in the bid submittal, its bid may be rejected and the next low responsive bid accepted.
3. Should more than one low bid be rejected, WSDOT and its subrecipients will determine the adequacy of the low and otherwise responsive bidder’s submission in light of DBE participation attained by all bidders. This will be accomplished by comparing the low bidder’s submission to the average DBE participation by all bidders. When computing average DBE participation, only the amount of the DBE goal attainment which does not exceed the established goal shall be used. Should the low bidder’s DBE participation be lower than the average, the bid shall be considered nonresponsive and shall be rejected. If the lowest bid is rejected, the next lowest bid(s) shall be examined under the foregoing criteria until the contract is awarded or all bids are rejected. The following is an example of goal averaging.

	Example 1		Example 2	
	Total Bid	DBE Bid	Total Bid	DBE Bid
Low Bid	\$ 99,000	13%	\$ 99,000	15%
Second	100,000	16%	100,000	13%
Third	100,500	15%	100,500	16%
Fourth	101,000	16%	101,000	16%
Total of DBE Bids		60%		60%
Average DBE Bid Goals		15%		15%

Each bidder shall submit a written assurance with their bid that they will meet the goal. The successful responsive bidder must provide the following information at the time of bid submittal:

1. The names of the DBE subcontractors proposed for contracts, including the OMWBE certification number.
2. The dollar value of each DBE subcontract proposed.

The successful bidder will obtain verification of OMWBE certification from the DBE business firm. The certification will identify the firm as being eligible

for DBE status. The successful bidder will have the responsibility of verification with OMWBE that the DBE firm’s certification is current.

B. After Execution

WSDOT will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor will perform. This description, dollar amount, and name of the DBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

In the event a bidder is unable to meet the assigned DBE contract goal, the bidder shall provide additional information regarding its good faith efforts to do so per the requirements of the contract. Good Faith Effort (GFE) documentation may be required after award and during the execution of the contract. GFE documentation may also be required during substitutions when a firm is unable or unwilling to perform. The bidder must document the steps taken to obtain participation which demonstrate *good faith efforts*, as outlined:

1. Evidence the bidders attended any presolicitation or prebid meetings that were scheduled by WSDOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
2. Evidence the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
3. Evidence the bidder advertised in general circulation, trade association minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
4. Evidence the bidder provided written notice to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified Firms for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
5. Evidence the bidder followed up initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. This may include the information outlined:
 - a. The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;

- b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the work to be performed;
 - c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
6. Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
 7. Evidence the bidder negotiated in good faith with the DBE firms, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
 8. Evidence the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by WSDOT or the contractor;
 9. Evidence the bidders efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of WSDOT;
 10. Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
 11. Evidence the bidder used the services of WSDOT's DBE Supportive Services consultant.

C. Administrative Reconsideration

If WSDOT or its subrecipients determine that the apparent successful bidder/offer or has failed to make a good faith effort to meet the goal, WSDOT and its subrecipients will, before awarding the contract, provide the bidder/offer or an opportunity for administrative reconsideration.

1. As part of this reconsideration, the bidder/offer or will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so;
2. WSDOT's decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder/offer or failed to meet the goal or make adequate good faith efforts to do so;

3. The bidder/offer or shall have the opportunity to meet in person with said official to discuss the issue of whether it met the goal or made good faith efforts to do so;
4. WSDOT shall send the bidder/offer or a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so; and
5. The results of the reconsideration process is not administratively appealable to the USDOT.

- h. **Condition of Award Letter.** The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for the project. A condition of award letter appears as Appendix 46.42. The second, third, fourth, and fifth paragraphs must be included in the letter. The DBE work shall be shown in the fifth paragraph. If a portion of an item is sublet to a DBE and the remainder is done by the contractor or another subcontractor, the DBE's work must be shown in detail in the fourth paragraph of the letter. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter and a copy of the "Disadvantaged Business Enterprise Utilization Certificate" to the Regional Local Programs Engineer as a part of the award documentation submittal explained in Chapter 46.

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Regional Local Programs Engineer shall be provided information on subletting by DBE contractors.

- i. **Between Award and Execution.** The contractor shall supply a contractors bidders list as described in the GSP's for all categories (voluntary, zero, and mandatory goals.) **The list shall include all firms that bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs.** The list shall also include the firms name and address.

- j. **Monitoring of the DBE During Construction.** The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to a condition of award letter shall be submitted in the form of a change order to the Regional Local Programs Engineer.

Project diary documentation of the DBE's activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor's activities.

In addition to the project diary, the form "DBE On-Site Review" should be completed by the CA Agency for every DBE condition of award (see Appendix 46.42):

- at the start of work, and/or
- at the peak period of work, and/or
- whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor's personnel. This completed form becomes a part of the local agency's project records. Additional forms are available from your Regional Local Programs Engineer.

The WSDOT GSP, Disadvantaged Business Enterprise Participation, and Chapter 1 of the WSDOT Construction Manual shall be followed to ensure compliance with the DBE Plan.

In order to satisfy the contract goal, a DBE firm shall perform a commercially useful function. A commercially useful function is defined as: responsibility for executing a distinct element of contract work and carrying out those responsibilities by actually performing, managing, and supervising the work involved. The documentation in the project diary and on the DBE On-Site Review form is the information that the local agency will use to determine whether a DBE is performing a commercially useful function. If there is evidence that a DBE firm is not performing a commercially useful function, immediately contact your Regional Local Programs Engineer.

- k. **Prompt Payment.** Refer to Amendment Section 1-08, Prosecution and Progress (March 6, 2000) and RC W 60.28 for "Prompt Payment" requirements.
- l. During **Completion of Construction.** The contractor shall submit Quarterly Report of Amounts Credited as DBE Participation, WSDOT Form 422-102 EF, to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contract work. This completed form is required quarterly and a final at the completion of the project must be submitted to the Olympia Service Center Highways and Local Programs Operations Engineer as specified on the form.
- m. **Records and Reports.** The local agency will maintain such records and provide such reports as necessary to ensure full compliance with the Plan.

Upon request from the OMWBE, WSDOT, or the USDOT, the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

26.3 Consultant Agreement Goals

The Highways and Local Programs Operations Engineer will review each consultant agreement with an estimated cost over \$250,000 to determine if a DBE goal is applicable for the agreement. The goal setting process follows the same guidelines at the construction contract (see 26.2(c)) only it utilized the tasks outlined in the agreement in place of the bid items.

1. The Local Agency will as part of the advertisement, indicate the established DBE goal in their advertisement for proposals.
2. Responsiveness to the DBE goal shall not be determined prior to award. However, failure to meet goal attainment may be utilized as an evaluation criteria on past work performance.
3. The Consultant shall include in their response to a Request for Qualifications an Information Packet that identifies the potential subcontractors, both DBE certified and non-DBE firms.
4. The Consultant will submit a scope of work and cost estimate that will identify each subconsultant. The consultant will meet the project DBE goal, identifying each subconsulted element of work.
5. The monitoring of DBE participation will be tracked using the Quarterly Amounts paid DBE participants as discussed in 26.2(k).

Appendixes

- 26.41 [Quarterly Report of Amounts Credited as DBE Participation](#)
- 26.42 [Disadvantaged Business Enterprise Utilization Certification](#)

Quarterly Report of Amounts Credited as DBE Participation



Washington State
Department of Transportation

Quarterly Report of Amounts Credited as DBE Participation

Quarter (1st, 2nd, 3rd, 4th) or Final _____ of Year _____		State Contract Number _____	
		Federal Employer I.D. Number _____	
Contractor _____			
DBE Participant Name and Federal Employer I.D. Number	Contract Type	Date of Payment	*Dollar Credit Amount
Contract Type: S = Subcontractor A = Agent M = Manufacturer R = Regular Dealer J = Joint Venture V = Service Provider			
I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each DBE participant contracted by me has been paid on the dates shown. *Further, I certify that the amounts shown under "Dollar Credit Amount" are in accordance with the DBE Eligibility portion of the DBE Special Provision.			
Signature _____ Title _____			

This form is due on the 20th of the month following the end of the respective Quarter (April, July, October, January). This form replaces "Affidavit of Amounts Paid MBE/WBE Participants" (DOT Form 421-023)

DOT Form 422-102 EF
3/00

Disadvantaged Business Enterprise Utilization Certification



**Washington State
Department of Transportation**

Disadvantaged Business Enterprise Utilization Certification

To be eligible for award of this contract the bidder must fill out and submit, as part of his/her proposal, the following certification relating to Disadvantaged Business Enterprise (DBE) requirements. This certification shall be deemed a part of the resulting contract. Failure to fill out and submit this certification, the inclusion of a false certification, or insufficient projected use of DBEs, shall be considered as evidence that the proposal is non-responsive to the invitation to bid.

Information on certified firms is available from OMWBE, phone (360) 753-9693.

certifies that the following Disadvantaged Business Enterprise(s)

Name of Bidder _____

(DBE) have been contacted regarding participation on this project and, if it is the successful bidder on this project, it shall award subcontracts to or enter into supply agreements with the following DBEs as indicated: (if necessary, use additional sheet).

Name of DBE Certificate Number	Capacity * (Prime, Joint Venture, Subcontractor, Manufacturer, Regular Dealer, Service Provider)	Description of Work	Amount to be Applied ** Towards Goal
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Disadvantaged Business Enterprise Subcontracting Goal: _____

DBE Total \$ _____ ***

* Regular Dealer status must be approved by the Office of Equal Opportunity, Wash. State Dept. of Transportation, on each contract.

** See the section "Counting DBE Participation Toward Meeting the Goal" in the Contract Document.

*** The Contracting Agency will utilize the above data to determine whether or not the bidder has met the goal or the average goal attainment of all bidders.

DOT Form 272-056A EF
Revised 12/97

27.1 General Discussion

To effectively assure Equal Employment Opportunity (EEO), it is the policy of the Federal Highway Administration (FHWA) to require that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the local agency must comply with the civil rights requirements.

The following statement shall be accepted by local agencies and contractors as their operating policy:

It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

Local agencies and their contractors must each designate an EEO officer to ensure compliance with the EEO Title VI, Section 504, and training policy.

The Washington State Department of Transportation (WSDOT) will monitor both the local agency and its contractors for compliance as part of the normal project management reviews and through contract compliance reviews of selected contracts.

The local agency, by signature to the Local Agency Agreement, agrees to the following:

- a. To assist and cooperate actively with the state in obtaining contractor and subcontractor compliance with the equal opportunity clause and rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- b. To furnish the state such information as it may require for the supervision of such compliance and otherwise assist the state in the discharge of its primary responsibility for securing compliance.
- c. To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts pursuant to the Executive Order and other pertinent rules, laws, and regulations.
- d. To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the state, FHWA, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the agency agrees that if it fails or refuses to comply with these undertakings, the state may take any or all of the following actions:

- Cancel, terminate, or suspend the Local Agency Agreement in whole or in part;
- Refrain from extending any further assistance to the agency regarding the failure or refusal to comply until satisfactory assurance of future compliance has been received from the agency; and
- Refer the case to the Department of Justice for appropriate legal proceedings.

The local agency must consult the WSDOT/APWA *Standard Specifications, Amendments, General Special Provisions*, and the WSDOT *Construction Manual* to administer the EEO and training programs.

27.2 Training

To meet federal requirements, each contract must comply with applicable GSPs and Form FHWA-1273.

Training goals are established by the Highways and Local Programs Operations Engineer on selected federal aid construction contracts. The goals are set based on the formula developed by WSDOT, and the goal setting process takes into account the following factors:

1. The dollar amount of the project (normally Highways and Local Programs will not set goals on projects of less than \$500,000).
2. Type of work. Project must lend itself to training.
3. Availability of minorities and women for training.
4. Geographic location of the project.
5. Duration of the work (normally Highways and Local Programs will not set training goals on projects of less than 60 working days).

The formula is a combination of opportunity and population ratings based on location. These are multiplied by the dollar amount of the project and provide a base figure for training hours. This is a base figure which is adjusted depending on the length of the project and the type of work. The Highways and Local Programs Operations Engineer determines the training hours, but the number of trainees is left to the discretion

of the local agency. The local agency must submit an engineer's estimate for the duration of the contract to the Regional Highways and Local Programs Engineer as a basis for the Highways and Local Programs Operations Engineer to set goals. (The training goals and DBE goals are established at the same time.)

If the local agency has a WSDOT approved EEO/On-the-Job Training (OJT) Plan which sets training goals, the agency may use those goals to establish specific project goals.

27.3 Contract Administration

.31 General. The local agency has the responsibility to:

- a. Conduct preconstruction conferences during which EEO and training Special Provisions for federal aid contracts are discussed with the contractor. (Emphasis should be made regarding the applicability of goal-by-craft versus average-of-all-crafts.)
- b. Ensure that the contractor posts and maintains notices and posters setting forth the contractor's EEO policy. A supply of OFCCP Poster No. 1420, Equal Employment Opportunity is the Law, shall be made available to the contractor.
- c. Monitor on-site compliance with the EEO and training Special Provisions of federal aid contracts.
- d. Ensure that their contractors locate, qualify, and increase the skills of minority groups, women employees, and applicants for employment as specified in the training provisions.
- e. Prepare and/or ensure the preparation of the required EEO and training reports.

.32 EEO Reports.

- a. PR 1391: This report is submitted by the contractor and subcontractors showing all the employees in the work force including an ethnic breakdown on their federal aid highway construction projects under construction during the month of July. The report is a summation of employees on their last payroll period preceding the end of July. The local agency retains this form in its project files.
- b. PR 1392: Summation of the July PR 1391 reports received from all contractors and subcontractors that were working on federally-assisted projects during the month of July. This report is prepared by the local agency and sent to the Regional Highways and Local Programs Engineer by August 30. This report is due at the Olympia Service Center by September 10 annually.
- c. DOT Form 820-010 Monthly Employment Utilization Report: This report includes the total work hours for each employee classification in each trade in the covered area for the monthly report period. All Contractors/Subcontractors having contracts of

\$100,000 or more that are federally funded shall submit WSDOT Form 820-010 to the Local Agency by the **fifth of the month** during the term of the contract. The Contractors/Subcontractors shall maintain this information in their files for all federally and locally funded projects under \$100,000. The hours reported represent the contractor's and subcontractor's federal and nonfederal funded projects in the SMSA or EA per the GSP. The completed form will represent a work force greater than what is on your project if the contractor or subcontractor has another project in the same SMSA or EA.

To monitor the forms submitted during the term of the contract, the local agency will summarize a contractor's progress by completing the "Monthly Employment Utilization Report Worksheet" or a similar form. The results of the summary will show whether the contractor is meeting the employment percentages that appear in the GSP.

.33 Training Reports.

- a. Form 272-060A: Federal Aid Highway Construction Annual Project Training Report, is maintained by the local agency's Project Engineer as trainees are approved. Questions 1-9 are taken directly from the Trainee Approval Request (Form 140-50A). Question 10 is to be completed from the project payroll/trainee records. Form 272-060A is due in the Regional Highways and Local Programs office by June 10.
- b. Form 272-061A: Federal Aid Highway Construction Cumulative Training Report, extracts the information taken from Form 272-060A. The Regional Highways and Local Programs Engineer prepares this report which is due in the Olympia Service Center by June 20.

27.4 Monitoring During Construction

- .41 EEO.** During the project construction, the local agency must monitor the contractor's performance to ensure compliance with its Title VI and Section 504 EEO policy. To accomplish this, the local agency must designate an EEO officer. The EEO officer's duties are to conduct reviews with the contractor, maintain records, reports, and required Title VI statistical data concerning the contractor's performance, and ensure that the local agency itself is in compliance with its EEO policy.
- .42 Training.** When training hours are assigned to the project, the local agency must verify that the trainee is on the project and is receiving beneficial training in accordance with the approved training program. When the trainees are on the project, the local agency shall periodically conduct interviews with them to determine if they are receiving the training as specified in the approved training program. The "Trainee Questionnaire" form or similar forms should be used to document the employee interviews and the contractor's compliance with the training requirement.

The contractor will submit certified monthly detailed invoices showing the related weekly payroll number, name of the trainee, total hours trained under the program, previously paid hours, hours due, and the dollar amount due this estimate. These invoices must be kept with the project records and will become part of the temporary final records to be retained for three years after acceptance of the project by WSDOT and FHWA.

I 27.5 Compliance Review

In addition to the selected compliance review of local agency contracts by WSDOT External Civil Rights (ECR), the Highways and Local Programs Operations Engineer's Office will review Title VI and Section 504 EEO and training compliance during its regular project management reviews. If, upon such examination, it is determined that further review is needed, the Olympia Service Center Highways and Local Programs Office may initiate a further investigation.

The evaluation of the local agency's and its contractor's compliance is based on the provisions included in the contract.

Forms

See Chapter 11 of the WSDOT *Construction Manual*.

